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FILED

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No.

OFFICE OF THE CLERK

In The

# Supreme Court of the United States

October Term, 1996

ELLEN P. FULFREE,

*Petitioner,*

against

ROBERT MANCHESTER and
MANCHESTER LAW OFFICES,

*Respondent,*

*Appendix for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit*

## APPENDIX FOR WRIT OF CERTIORARI

MORTON N. WEKSTEIN
*Attorney for Petitioner*
612 E. Grassy Sprain Road
Yonkers, New York 10710
(914) 961-7500

125 pp

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2. Memorandum Decision and Order of District Court
3. Notice of Filing, Notice of Removal and exhibits attached thereto including summons and complaint, retainer agreement between plaintiff and defendant, page from Martindale-Hubbel and defendant's motion to withdraw
4. Amended Notice of Removal without exhibits which are identical to those on original Notice of Removal
5. Letter dated February 1, 1996 to Richard W. Fulfree, Esq. from Defendant's Attorney
6. Letter dated March 11, 1996 to Richard W. Fulfree, Esq. from Defendant's Attorney 7. Notice of Motion to Remand Case to State Court with Exhibits
8. Affirmation in Opposition with Exhibits
9. Summary Disposition in the US Court of Appeals dated October 4, 1996
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APPEAL
U.S. District Court
Southern District of New York - Civil Database (Foley Square)
CIVIL DOCKET FOR CASE #: 95-CV-7723

Fulfree v. Manchester, et al
Assigned to: Judge Denny Chin
Demand: $5,300,000
Lead Docket: None
DKT# in other court: None

Filed: 09/07/95
Jury demand: Defendant
Nature of Suit: 360
Jurisdiction: Diversity

Cause: 28:1441 Petition for removal

ELLEN P. FULFREE
plaintiff

Richard W. Fulfree, Esq.
[COR LD NTC]
Richard W. Fulfree
621 E. Grassy Sprain Road
Yonkers, NY 10710

v.

ROBERT MANCHESTER
defendant

Martin B. Adams
[COR LD NTC]
Kopff, Nardelli & Dopf
440 Ninth Avenue
New York, NY 10001
(212)244-2999

MANCHESTER LAW OFFICES
defendant

Martin B. Adams
(See above)
(COR LD NTC]

==========

ROBERT MANCHESTER
counter-claimant

Martin B. Adams
(COR LD NTC)
Kopff, Nardelli & Dopf
440 Ninth Avenue
New York, NY 10001
(212)244-2999

MANCHESTER LAW OFFICES
counter-claimant

Martin B. Adams
(See above)
(COR LD NTC]

Docket as of February 2, 1996 3:15 pm Page 1

Proceedings include all events. APPEAL

1:95cv7723 Fulfree v. Manchester, et al

v.

ELLEN P. FULFREE
counter-defendant

Richard W. Fulfree, Esq.
(COR LD NTC)

Richard W. Fulfree
621 E. Grassy Sprain Road
Yonkers, NY 10710

Docket as of February 2, 1996 3:15 pm page 2

Proceedings include all events. APPEAL
1:95cv7723 Fulfree v. Manchester, et al

| | | |
|---|---|---|
| 9/7/95 | 1 | NOTICE OF REMOVAL from Supreme State Court County of Westchester; FILING FEE $120.00 RECEIPT #245605 (ba) [Entry date 09/11/95] |
| 9/7/95 | 2 | Rule 9 certificate filed by Robert Manchester, Manchester Law Off. (ba) [Entry date 09/11/95] |
| 9/7/95 | -- | It is suggested that the case be classified as standard. Magistrate Judge Francis is so Designated. (ba) [Entry date 09/11/95] |
| 9/13/95 | 3 | NOTICE of Filing Notice of Removal by Robert Manchester, Manchester Law Off. (lam) [Entry date 09/21/95] |
| 9/14/95 | 4 | ANSWER to Complaint by Robert Manchester, Manchester Law Off. (Attorney ), ; Firm of: KN&D by attorney Martin B. Adams for defendant Manchester Law Off. (dd) [Entry date 09/21/95] |
| 10/3/95 | 5 | AMENDED ANSWER to Complaint by Robert Manchester, Manchester Law Off. : amends [3-1] answer (pl) [Entry date 10/10/95] |
| 10/3/95 | 5 | COUNTERCLAIM by Robert Manchester, Manchester Law Off. against Ellen P. Fulfree (pl) [Entry date 10/10/95] |

| | | |
|---|---|---|
| 10/4/95 | 6 | NOTICE OF MOTION by Richard W. Fulfree to remand this case to the Supreme Court, Westchester County w/attch. aff. and statement in support, Return date 10/20/95 (pl) [Entry date 10/11/95) |
| 10/11/95 | 7 | MEMORANDUM by Ellen P. Fulfree in SUPPORT of [6-1] motion to remand this case to the Supreme Court, Westchester (lam) [Entry date 10/17/95] |
| 10/12/95 | 8 | DEMAND for jury trial by Robert Manchester, Manchester Law Off. (pl) [Entry date 10/18/95] |
| 10/23/95 | 10 | AFFIRMATION by Robert Manchester, Manchester Law Off. in opposition Re: [6-1] motion to remand this case to the Supreme Court, Westchester County (emil) [Entry date 10/26/95] |
| 10/25/95 | 9 | REPLY AFFIDAVIT of R. Fulfree by Ellen P. Fulfree in opposition to deft's affirmation n oposition [sic] 10/20/95 (cd) [Entry date 10/26/95) |
| 1/3/96 | 11 | MEMORANDUM DECISION AND ORDER DENYING (6-1] motion to remand this case to the Supreme Court, Westchester County, I hereby grant Manchester leave to file Amended Notice of Removal Within days hereof., Set pretrial conference for 4:00 2/2/96 in Courtroom 11A of the Courthosue [sic] at 500 Pearl Street. SO ORDERED: (signed by Judge Denny Chin) (ae) [Entry date 01/04/96) [Edit date 01/04/96] |



Proceedings include all events. APPEAL

1:95cv7723 Fulfree v. Manchester, et al

| | | |
|---|---|---|
| 1/19/96 | 12 | NOTICE OF APPEAL by Ellen P. Fulfree ; from [11-1] order I hereby grant Manchester leave to file Amended Notice of Removal within days hereof. . Copies of notice of appeal mailed to Attorney(s) of Record: Martin B. Adams . (as) [Entry date 01/25/96] |
| 1/25/96 | -- | Notice of appeal and certified copy of docket to USCA: [12-1] appeal by Ellen P. Fulfree ; Copy of notice of appeal sent to District Judge. (as) |
| 1/30/96 | 13 | Filed Memo_Endorsement on letter dated 1/23/96, the application to transfer to White Plains is DENIED (signed by Judge Denny Chin) (cd) [Entry date 01/31/96] |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ELLEN P. FULFREE,

Plaintiff,

MEMORANDUM DECISION and ORDER
95 Civ. 7723 (DC)

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

APPEARANCES:

RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 E. Grassy Sprain Road
Yonkers, New York 10710

KOPFF, NARDELLI & DOPF
Attorneys for Defendants
By: Martin B. Adams, Esq.
440 Ninth Avenue
New York, New York 10001

CHIN, D.J.

Plaintiff Ellen P. Fulfree ("Fulfree") originally filed this attorney malpractice action in Westchester County Supreme Court. Defendants Robert Manchester and Manchester Law Offices (collectively "Manchester") removed the action to this Court pursuant to 28 U.S.C. § 1446. Fulfree has now moved to remand the action. For the reasons stated below, the motion is denied.

BACKGROUND

Fulfree served Manchester with a copy of her summons and complaint on August 23, 1995. Thereafter, on September 7, 1995, Manchester filed a Notice of Removal. The notice alleges that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 based on complete diversity of citizenship an amount in controversy exceeding $50,000. The notice does not state defendant Manchester Law offices' place of incorporation or principal place of business. It does state, however, that "Manchester Law Offices is deemed to have a residence" in Vermont. In fact, Manchester Law Offices is a Vermont corporation with its principal place of business in Vermont. Fulfree now moves to remand the action to state court, arguing that the Notice of Removal is defective.

DISCUSSION

Despite her relatively voluminous submissions, Fulfree raises only one meritorious issue: Manchester's Notice of Removal omitted certain information required by Local Civil Rule 25. Specifically, the Notice of Removal fails to set forth Manchester Law offices' place of incorporation and principal place of business.

Under 28 U.S.C. § 1446(b), a petition for removal must be filed "within thirty days after the receipt by the defendant, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action is based...." Furthermore, when removal jurisdiction is based upon diversity of citizenship, this district's local rules require the Notice of Removal to "set forth the states of citizenship and residence, address of each party named in the caption and, in the case of a corporation, the state of incorporation and of its principal place of business...." Local Civil Rule 25(b). A defendant seeking removal must strictly comply with these requirements; where there is doubt as to whether the requirements have been satisfied, the case should be remanded. See, e.g. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); Somlyo v. J. Lu-Rob Enters., Inc., 932 F.2d 1043, 1046 (2d Cir. 1991).

Here, Manchester's Notice of Removal failed to comply with Local Civil Rule 25, as it omitted defendant Manchester Law Offices' place of

incorporation and principal place of business. Thus, the Notice of Removal was indeed defective. Nevertheless, a distinction exists between a fundamental defect, witch cannot be untimely amended, and a technical defect, which can be amended after the 30-day period has run. CBS Inc. v. Snyder, 762 F. Supp. 71, 73 (S.D.N.Y. 1991); see generally 14 AC Wright, A. Miller & E. Cooper, Federal Civil Practice and Procedure § 3733, at 536-37.

The defect in Manchester's Notice of removal was merely technical. The notice alleged diversity of citizenship and stated that Manchester Law Offices' residence is Vermont. Manchester simply did not provide the factual allegations supporting a corporation's residence for jurisdictional purposes, namely, place of incorporation and principal place of business. Such an omission merely represents a technical defect in a notice or removal. Grow Group v. Jandernoa, No. 94 Civ. 5679(RPP), 1995 WL 60025, at *2-3 (S.D.N.Y.) Feb. 10, 1995); Snyder, 762 F. Supp. at 75 & n.5. Moreover, Manchester's proposed Amended Notice of Removal cures this defect. Accordingly, I will grant Manchester leave to file an amended notice of removal. Fulfree's other grounds for remand to state court are meritless and thus are rejected.

CONCLUSION

For the foregoing reasons, Fulfree's motion to remand is denied. I hereby grant Manchester leave to file an amended Notice of Removal within 20 days hereof. Counsel for the parties are to appear for a pretrial conference on February 2, 1996 at 4:00 p.m. in Courtroom 11A of the Courthouse at 500 Pearl Street.

SO ORDERED

Dated: New York, New York
January 2, 1996

[signed] DENNY CHIN
United States District Judge

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

ELLEN P. FULFREE,

NOTICE OF FILING
Plaintiff,

NOTICE OF REMOVAL

-against-

Index No. 95-13051

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

TO: CLERK OF THE COURT:

YOU WILL PLEASE TAKE NOTICE, that defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES have filed in the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York, 10007 a Notice of Removal of this Supreme Court action to the District Court of the United States, Southern District of New York, 40 Foley Square, New York, New York 10007.

A true and correct copy of the Notice of Removal is attached to this notice. The filing of this notice and copy of Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Westchester, effects a removal to the District Court of the United States, and the Supreme Court of the State of New York, County of Westchester may proceed no further, unless this case is remanded, 28 U.S.C. 1446(d).

Dated: September 11, 1995
New York, New York

Respectfully submitted,
KOPFF, NARDELLI & DOPF
By: [signed]
MARTIN B. ADAMS
Associated with the Firm
Attorneys for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 Grassy Sprain Road
Yonkers, N.Y. 10710

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
ELLEN P. FULFREE,

Plaintiff, NOTICE OF REMOVAL

-against-

Docket No. [stamped] 95 CIV. 7723 Received 9/7/95, U.S.D.C. S.D. N.Y.

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.----------x

Defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES hereby file this Notice of Removal of the above-described action to the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007 from the Supreme Court of the State of New York, County of Westchester, where the action is now pending, as provided by Title 28, U.S.C. Chapter 89, and state:

1. This cause was commenced in the Supreme Court of the State of New York, County of Westchester by filing of a Summons and Complaint on or about August 15, 1995, and process was served upon removing defendants on August 23, 1995. A copy of plaintiff's complaint is annexed hereto as Exhibit "A".

2. The action is a civil action for compensatory damages based upon alleged lawyer malpractice.

3. The ground for removal is that diversity jurisdiction exists, as there is complete diversity of citizenship and the amount in controversy exceeds the sum or value of $50,000.

4. Plaintiff contends this matter in dispute exceeds the sum of

fifty thousand dollars ($50,000) exclusive of interest and costs.

5. At the time of commencement of this action, plaintiff resided at 115 Bennett Avenue, Yonkers, New York. Defendant MANCHESTER LAW OFFICES is deemed to have a residence at One Lawson Lane, Burlington, Vermont 05401. Defendant ROBERT MANCHESTER resides at 5 Pond Road, Shelburne, Vermont 05482.

6. A copy of all pleadings, process, and orders served upon defendants is filed with this notice.

7. Defendants will give written notice of the filing of this notice as required by 28 U.S.C. Section 1446(d).

8. A copy of this notice will be filed with the Clerk of the Supreme Court of the State of New York, County of Westchester, as required by 28 U.S.C. Section 1446(d).

9. This notice of removal is being filed within thirty days after the receipt by defendants of a copy of the initial pleading setting forth the claim for relief upon which the action is based, 28 U.S.C. Section 1446(b).

WHEREFORE, defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES respectfully request that this action proceed in this Court as an action properly removed to it.

Dated: September 6, 1995
New York, New York

Respectfully submitted,

KOPFF, NARDELLI & DOPF

By: [signed]
MARTIN B. ADAMS
Associated with the Firm
Attorneys for Defendants
440 Ninth Avenue

New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

---

ELLEN P. FULFREE,

Plaintiff,
-against-
ROBERT MANCHESTER and MANCHESTER LAW OFFICES,
Defendants.

---

SUMMONS AND COMPLAINT

---

RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, New York 10710
(914) 961-7500

---

To: [stamped] received 8/23/95
KOPFF, NARDELLI & DOPF

---

PLEASE TAKE NOTICE
[printed] RICHARD W. FULFREE, ESQ.
Attorney for PLAINTIFF
612 East Grassy Sprain Road
Yonkers, New York 10710

---

STATE OF NEW YORK, COUNTY OF WESTCHESTER ss:
ELLEN P. FULFREE being sworn says: I am PLAINTIFF in the action herein; I have read the annexed COMPLAINT
(x) know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on the information and belief, and as to those matters I believe them to be true.

[signed] ELLEN P. FULFREE

Sworn to before me on August 15, 1995
[signed] Richard W. Fulfree
[stamped] RICHARD W. FULFREE

NOTARY PUBLIC, State of New York
No. 49 5439
Qualified in Westchester County
Commission Expires 12/19/97

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

---

ELLEN P. FULFREE,

Plaintiff
-against-
ROBERT MANCHESTER and MANCHESTER LAW OFFICES,
Defendant

Index No. 95-13051
Plaintiff designates WESTCHESTER County as the place of trial

The basis of the venue is
PLAINTIFF'S RESIDENCE

Summons with Notice

Plaintiff resides at
115 BENNETT AVENUE
YONKERS, NEW YORK
County of WESTCHESTER

---

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

Dated, AUGUST 15, 1995

Defendant's address: ONE LAWSON LANE, PO BOX 1459 BURLINGTON, VERMONT 05402

RICHARD W. FULFREE, ESQ.
Attorneys for Plaintiff
Office, Post Office Address and Telephone Number
612 E. GRASSY SPRAIN ROAD
YONKERS, NEW YORK 10710
(914) 961-7500

Notice: The object of this action is MONEY JUDGEMENT

The relief sought is MONEY JUDGEMENT

Upon your failure to appear, judgement will be taken against you by default for the sum of $5,325,000.000 with interest from June 15, 1981 and the cost of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

ELLEN P. FULFREE,

COMPLAINT
Plaintiff,
Index No. 95-13051

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

Plaintiff of defendants by her attorney, RICHARD W. FULFREE, respectfully shows to the court and alleges:

FOR A FIRST CAUSE OF ACTION

FIRST: That upon Information and Belief the defendant, Manchester, is an attorney-at-law admitted to practice in the State Vermont and in other jurisdictions, and has practiced extensively within the State of New York.

SECOND: That upon Information and Belief Manchester Law Offices is a Professional Corporation duly organized and existing under the laws of the State of Vermont.

THIRD: That in June 1981 defendant Manchester and plaintiff discussed over the telephone, Burlington, Vermont to Yonkers, New York, the matter of plaintiff retaining said Manchester to bring suit, on plaintiff's behalf, against A.H. Robins Co., Inc. because of the severe injuries sustained by plaintiff by reason of her having used and worn the "Dalkon Shield" intrauterine device, manufactured and produced by said Robins Co. and put into nationwide and international commerce by said Robins Co.

That during said conversation and on many occasions thereafter, defendant represented to the plaintiff that he was a specialist and expert in products liability and negligence arising therefrom and particularly in law relating to the defects in the Dalkon Shield. Plaintiff believed the said representations and in reliance thereon executed a written agreement retaining defendant (Exhibit A).

FOURTH: At the time plaintiff spoke to defendant he was associated with a law firm in Burlington, Vermont, operating under the firm name and style of Lisman & Lisman. Thereafter and at some time after June of 1981, defendant severed his association with that firm and he retained as his own personal case plaintiff's action against Robins Co.

FIFTH: That on or about the 1st day of July, 1983 the defendant Manchester organized a professional corporation under the firm name and style of "Manchester Law Offices', and on communications therefrom there was another person mentioned on the letterhead, to wit, one O'Neill.

SIXTH: Defendant Manchester continued so to practice until January 1988, after which the name of O'Neill was crossed out and omitted from the letterhead.

SEVENTH: From time to time other persons appeared on the letterhead of Manchester Law Offices but defendant's name continued to appear down to the date hereof.

EIGHTH: Annexed hereto as Exhibit A of this complaint is the retainer agreement mailed by defendant Manchester to plaintiff on June 15, 1981 and signed in Yonkers, New York and returned to defendant Manchester on January 24, 1981. Defendant Manchester represented to plaintiff that he personally would be plaintiff's lawyer and represent plaintiff in the instant action and has dealt with plaintiff directly until he resigned in this case by a motion to withdraw from this case bearing date January 6, 1995, but actually served by mail on January 6, 1995.

NINTH: Before plaintiff's signing the retainer agreement, "Exhibit A" hereof, defendant Manchester represented to plaintiff that he was an expert in product liability cases, and had thousands of Dalkon Shield cases both in the United States and England annexed hereto as

Exhibit B and made a part hereof is the description of said Manchester's professional capabilities and the nature of his law practice as it appeared in Martindale-Hubbell.

TENTH: Upon Information and Belief the defendant had very many cases in New York State concerning the Dalkon Shield and had contracts (retainer agreements) with very many plaintiffs residing in New York State and had in June of 1981 many clients in the State of New York and was conducting a business in the State of New York and has regularly appeared in courts within the State of New York.

ELEVENTH: That defendant regularly solicits product liability, negligence and fraud cases within the State of New York and has derived substantial revenue from such cases and has performed acts which he had expected to have consequences in the State of New York.

TWELFTH: That defendant has committed tortious acts within and without the State of New York, to wit, malpractice and fraud, and infidelity to a client, to wit, acts which were intended and did harm plaintiff.

THIRTEENTH: That from June of 1981 until the defendant's resignation from this case by motion, served on January 6, 1995, a period of over 13-1/2 years, defendant did absolutely nothing of consequence to ready plaintiff's case against Robins for trial, performed no discovery on behalf of plaintiff, and turned over to plaintiff no documents generated by or during discovery. That such delay constituted negligence, per se.

FOURTEENTH: That pursuant to the CRF and administrative orders in the Robins Chapter 11 "bankruptcy" of all cases pending A.H. Robins Inc.'s pending cases were required to be certified for Trial against the Dalkon Shield Claimants Trust: that upon Information and Belief defendant did not accomplish the said certification in this case until March 22, 1992, although the petition for reorganization of A.H. Robins Inc. occurred in 1985.

FIFTEENTH: That the papers turned ever to plaintiff and her attorney after Manchester's voluntary motion to be relieved contained no documents of any kind originated by said defendant or discovered by him,

which had any tendency to show preparation for trial.

SIXTEENTH: Plaintiff was greatly injured by said delay since by terms of the Claims Resolution Facility and the orders entered in the Chapter 11 reorganization of A.H. Robins Co., Inc. the plaintiff was deprived entirely of her right to be awarded punitive damages and entirely of all discovery devices except interrogatories and requests to admit, which greatly reduced the amount of compensatory damages provable and additionally, as a result of the delay, plaintiff lost the chance to seek any discovery of adversary A.H. Robins Co., Inc. by any of its officers, directors and employees and to examine them as witnesses since upon Information and Belief, all of those persons were dead or retired on or before January of 1995.

SEVENTEENTH: That defendant Trust advanced and used the plaintiff's 13-1/2 years in plaintiff's action against the Trust very successfully in its effort to limit and destroy plaintiff's discovery so that as of the date hereof, plaintiff has been accorded no meaningful discovery and the event will be forced to embark upon the trial against the trust without the benefit of true discovery as the same is normally accorded in Federal Court.

EIGHTEENTH: The defendant on or about January 6, 1995 made a motion in the U.S. District Court, Southern District of New York, to be relieved in the instant case in which he said "Nevertheless, I can represent to the Court that my decision involve (sic) irreconcilable differences regarding the proper management of this litigation." Annexed hereto is said motion marked Exhibit C hereof: said motion failed to mention any claim for disbursements and made no attempt to reserve any right thereto.

NINETEENTH: That the statement quoted in paragraph 18 was false and untrue and was deliberately made false since the differences between the parties was not to the future conduct of the litigation but as to whether the litigation was to have any future.

TWENTIETH: The defendant was urging and seeking to compel plaintiff to abandon the plaintiff's action against the substitute defendant, Dalkon Shield Claimants Trust, which was a defendant substituted in the place and stead of A.H. Robins Co., Inc. by the Bankruptcy Court in the

Chapter 11 reorganization of A.H. Robins Co., Inc.

TWENTY-FIRST: The difference between plaintiff and defendant arose only because plaintiff refused to abandon her lawsuit v. the said Trust and to permit defendant to abandon same (with prejudice).

TWENTY-SECOND: The defendant's initiation of the scheme of abandoning the plaintiff's case arose because of his lack of understanding of applicable law as follows:

A. Defendant's total incompetence as a member of the bar, and as a litigator in strict products liability and his total lack of knowledge of the basic concepts of that field, and his failure to do any adequate research into the developments in that field of law since 1975 and to the present, and his failure to know and apprise himself of appropriate tactics generally of a litigator and trial lawyer.

B. Upon Information and Belief that defendant maintained and still maintains a close relationship with Paul Strain, Esq., an attorney for defendant Trust, which is inimical to his being able to serve plaintiff faithfully as a client, which resulted in his performance for his client being a species of divided loyalty to the gross prejudice of client's rights and interests.

TWENTY-THIRD: Heretofore and during pendency of plaintiff's action v. Dalkon Shield Claimants Trust the said Trust offered plaintiff a settlement of $93,000.00 in damages.

TWENTY-FOURTH: At that time the instant defendant urged plaintiff to decline the offer stating that he would achieve a result on behalf of plaintiff equaling or exceeding $500,000.00 and accordingly plaintiff rejected the offer relying upon defendant's advice and said offer expired according to its term.

TWENTY-FIFTH: Defendant at all times failed to understand the following matters of law which the average competent practitioner would have known.

(1) That in products liability the plaintiff need not show in order

to prevail that the product defect was the sole cause of plaintiff's injury but only "a" cause thereof;

(2) that in products liability cases for any action or event to serve successfully as a contributory cause it must be the sole cause of plaintiff's injury: defendant's total failure to understand the law in this regard is shown in a letter to plaintiff dated September 30, 193 [sic] in which he said Chlamydia Trachomatis "was significantly involved because it weakened your fallopian tubes and rendered them susceptible to bacterial salpingitis, and thereby proximately produced your 1979 infection and surgery"; (emphasis added)

(3) that the defendant's failed properly to plead the existence of any claimed contributory cause (Chlamydia or other) and failed to raise any such matter as an issue;

(4) that the presence or absence of Chlamydia Trachomatis or any other disease organism, sexually transmitted or otherwise, except for E Coli which was the sole pathogen found in plaintiff's body, and was the sole pathogen discovered therein, is irrelevant on the trial of this cause;

(5) that defendant's answer up to the time defendant withdrew contained no affirmative defense or other allegation properly alleging Chlamydia Trachomatis or any other disease bearing organism and that any purported pathogen other than E Coli would not be admissible on trial except for the purpose in sub paragraph (7);

(6) that the presence or absence of Chlamydia Trachomatis would not be admissible to show that plaintiff's resistance to E Coli or other pathogens was lowered by the presence of Chlamydia Trachomatis (See letter of 9/30/83 supra);

(7) That the only manner in which the presence of Chlamydia Trachomatis would become relevant and material would have been on plaintiff's offer to prove that the Dalkon Shield was defective because of the failure of Robins to warn physicians (and/or users) that the use of the Dalkon Shield was counter indicated in the presence of Chlamydia or any other sexually transmitted disease;

(8) That the nature of the pathogen which ascended the DS tail string was immaterial, as long as its ascent was caused or facilitated by the presence of the said Dalkon Shield and its defective tail string;

(9) That defendant would not have been entitled to a discovery order commanding plaintiff to give blood for a Chlamydia titer because the presence or absence of Chlamydia Trachomatis was not a matter "in issue" in plaintiff's Dalkon Shield case and was not raised by the pleadings;

(10) That under and by virtue of the holdings of Fitzpatrick v. A.H. Robins Co., Inc., 126 AD 2d 513, 510 N.Y.S. 2d 632 (App. Div., 2d Dept), Tetuan v. A.H. Robins Co., Inc., 241 Kan 441, 738 Pac 1210 (Supreme Court of Kansas, and cases cited therein, Palmer v. A.H. Robins Co., Inc., sitting En Banc and cases cited therein and Hawkinson v. A.H. Robins Co., Inc., 595 F Supp 1290 (U.S. District Court Colorado), A.H. Robins Co., Inc., and Dalkon Shield Claimants Trust by virtue of collateral estoppel were and are precluded from raising any issues in plaintiff's case against the Trust except the amount of damages;

(11) That the titers voluntarily suffered as a result of plaintiff's importunity, which importunity resulted from his ignorance of the applicable law, and of the applicable law of science showed at best a vague negative for Chlamydia Trachomatis, or any other Chlamydia species, except for Chlamydia Pneumoniae, as to which there was some indication that plaintiff had suffered pneumonia at some indeterminate time in her life, a disease carried by contact with human spittle;

(12) That plaintiff did in fact suffer three bouts of pneumonia during her early life, and advised defendant of that fact;

(13) The Claimants Resolution Facility adopted by order of the Bankruptcy Court and the U.S. District Court for the Eastern District of Virginia provides:

(13) Causation. Causation will be in issue except as waived by the Trust. However, the Trust shall at all times, consistent with its purposes, minimize the intrusion into such private matters as the users' frequency of sexual relations, number of sex partners, age of onset of

intercourse, sexual practices and the like.

(14) Defendant DS Trust at depositions of plaintiff, of Richard Fulfree, husband, of plaintiff's two children, of plaintiff's former husband, asked almost entirely questions prohibited by the CRF, questions designed to humiliate and discourage plaintiff and to destroy her reputation, and to dub her as a woman devoted to meretricious pursuits: this defendant and/or his duly designated associate, either through incompetence or disloyalty failed to object and failed entirely to understand that it was their duty to object; the impact of this behavior was that defendant injured plaintiff by permitting the Trust to import into this case a total non-issue with which he left plaintiff to cope at trial.

(15) Defendant also failed to understand that under governing law a defendant takes a plaintiff as defendant finds him and cannot be heard to urge that plaintiff is weaker or less resistant to trauma or infection, and it is not a defense or a fact in mitigation of damages that plaintiff is weaker than other persons and is more easily injured or less resistant to disease. (See letter of September 30, 1993, supra)

(16) Defendant failed to understand that the corporate shield is not effectual in tort cases to protect officers, directors and employees of a corporation who join with the corporation in tortious activity, or perform tortious acts on behalf of a corporation, and therefore negligently failed to join the various individuals who jointly with corporation committed the various torts defined as strict product liability, fraud and negligence.

TWENTY-SIXTH: In June 1993 defendant induced plaintiff to undergo a test for Chlamydia having been induced to make that request by Paul Strain, Esq., an attorney for defendant Trust and defendant and plaintiff agreed that the tests were to be for the purpose of analyzing plaintiff's case and for no other purpose and that they were not to be disclosed to the Trust or to anyone else.

TWENTY-SEVENTH: Plaintiff underwent several titers for the above purpose and with results set forth above.

TWENTY-EIGHTH: Defendant then, erroneously believing the tests to be harmful to plaintiff's case, disclosed the results to Paul Strain,

Esq., counsel to defendant without seeking plaintiff's permission so to do, and without plaintiff's knowledge.

TWENTY-NINTH: Said Paul Strain, Esq. on or about November 20, 1993 wrote a letter to District Judge Keenan stating, "Mr. Manchester reported to me (Strain) orally on September 13 that an antibody titer showed evidence of a previous Chlamydia infection."

THIRTIETH: From that time forward, either through disloyalty, incompetence or both, defendant urged with great importunity 1. that plaintiff sign a stipulation prepared by Strain, Esq. agreeing to the results of the titers and that they validly showed that plaintiff had Chlamydia Trachomatis and also subsequently plaintiff execute a stipulation of discontinuance.

THIRTY-FIRST: At one of these sessions defendant stated very openly that plaintiff should "sit down with Richard (Fulfree) and a bottle of wine and bare your lives to each other" meaning to imply that we had then been guilty of infidelity, each to each other, and that therefore plaintiff's case against the Trust was valueless.

THIRTY-SECOND: It was only after it became clear to him that plaintiff would not sign either stipulation and would not abandon the case as he wished plaintiff to do, that he made his motion to withdraw from plaintiff's case, which motion was granted.

THIRTY-THIRD: Upon the withdrawal of defendant from plaintiff's case against the Trust, plaintiff's new and present counsel wrote to defendant demanding that defendant forward all documents relating to plaintiff's case against the Trust, including all depositions taken dealing with plaintiff's case.

THIRTY-FOURTH: On February 17,1995 defendant wrote to Mr. Fulfree, plaintiff's present counsel, a response in which he stated that he had conducted no discovery of any kind in plaintiff's case and indicated that his intent was to rely on discovery and depositions made by other counsel on behalf of other plaintiffs while A.H. Robins was still the defendant before the Chapter 11 bankruptcy.

THIRTY-FIFTH: By said statement defendant admitted that the discovery made in the multi-district litigation and discovery made on behalf of other plaintiffs in other cases concerning the Dalkon Shield would be relied on by him at trial as a necessary part of plaintiff's case against the Trust

THIRTY-SIXTH: Defendant declined and refused to send plaintiff's counsel copies of all such discovery which he deemed to be part of, and essential to the presentation of plaintiff's case.

THIRTY-SEVENTH: Moreover, defendant did not trouble to describe the documents upon which he had intended to rely, in the trial of plaintiff's case, if ever that trial had taken place, by caption, by names of the various plaintiffs, the date taken, the names of the attorneys involved, the name of the person who uttered or created such document, whether they were in the document depository or in the files of different attorneys or clerks of court, the content of the various documents, their nature and relevancy to plaintiff's case as defendant conceived them.

THIRTY-EIGHTH: Therefor on February 17, 1995 plaintiff was left with a file which to all intents and purposes was vacant of useful information except for some, but not all of the pleadings and depositions taken by defendant of plaintiff and her witness, conducted by the Trust, and items of correspondence.

THIRTY-NINTH: The plaintiff's counsel, upon entry into the case was made aware that the trial date was November 6, 1995.

Fortieth: Faced with the necessity of getting useful information of some sort on behalf of plaintiff, plaintiff's new attorney prepared and served on April 18, 1995, a set of 600 plus interrogatories to the attorneys for the Trust: those interrogatories have never been answered.

FORTY-FIRST: A conference was thereon held by and before Hon. William C. Conner, District Judge, at which time plaintiff's counsel was directed to "cull" the matters and endeavor to make them less voluminous and to divide them between interrogatories and requests to admit.

FORTY-SECOND: That at that conference plaintiff's counsel made clear that he was then in progress of preparing a motion addressed to the defects in the Trust's answer, and for summary Judgment against the Trust.

FORTY-THIRD: Thereafter and on March 23, 1995 plaintiff served interrogatories and requests to admit which totaled slightly more than one-half the inquiries in the original set of interrogatories.

FORTY-FOURTH: On or about April 10, 1995 plaintiff's counsel received objections to both the interrogatories and requests to admit, and failing to address the question of why any individual interrogatory or request was unlawful and unauthorized.

FORTY-FIFTH: There were then five other conferences held, one on March 30, 1995 with Judge Conner, one on June 8, 1995 with Judge Conner, and one on July 28, 1995 with Judge Conner and one on July 28, 1995 with Magistrate Lisa M. Smith and one on August 3, 1995 with Magistrate Smith.

FORTY-SIXTH: The results of the conferences as of the date hereof are:

(a) Plaintiff has not received proper and lawfully adequate responses to either type of discovery which are the only types permitted by the Claimants Resolution Facility.

(b) That plaintiff has been told at conferences that all inquiries concerning documents need not be answered despite the fact that plaintiff may not under the CRF serve requests to produce documents.

(c) Plaintiff was ordered by Judge Conner to complete all discovery, before making a motion addressed to the pleadings and a concurrent motion for summary judgment.

(d) Defendant, Trust, has made a motion in Bankruptcy Court to interpret CRF and to limit plaintiff's discovery, despite the fact that the case against the Trust has been duly certified for trial in the Southern District of New York, and that the matter of that interpretation was duly

addressed by the said Southern District of New York, and that the motion in the Bankruptcy Court in Virginia is still pending causing yet further delay to that already suffered by plaintiff.

(e) That at a conference held on July 28, 1995 Magistrate Lisa M. Smith gave the Trust until August 17, 1995 to answer the plaintiff's interrogatories and requests to admit, although the history of the litigation mandates the conclusion that the Trust's compliance will be at best perfunctory, and at the same time Magistrate Smith declined to delay the trial date beyond the previously fixed date of November 6, 1995.

FORTY-SEVENTH: Thus because of defendant's sloth, lack of skill, and failure to give the plaintiff his undivided loyalty, plaintiff is placed in the position of going to trial November 6, 1995 without having been permitted meaningful discovery, and without having had time properly to examine the fruits thereof, and to prepare for trial and without having had time to prepare and have decided before November 1995 of the essential motion addressed to the Trust's invalid, and even colorable defenses, and addressing the matter of summary judgment based upon collateral estoppel, stare decisis and the failure of the Trust and/or A.H. Robins Co., Inc. to raise any justiciable facts in issue.

FORTY-EIGHTH: That by reason of defendant's gross negligence and disloyalty, and because of defendant's delay and lack of skill, plaintiff has been deprived of her lawful and compensatory damages in the amount of $1,570,000.00 and of proper punitive damages in the amount of $3,750,000.00.

FOR A SECOND CAUSE OF ACTION

FORTY-NINTH: That on December 20, 1991 defendant wrote to plaintiff's attorney regarding disbursements allegedly made by him in the amount of $31,500.00.

FIFTIETH: That on September 16, 1994 defendant sent to plaintiff's attorney the same list of disbursements in the same amount.

FIFTY-FIRST: That even had the defendant had had a valid claim for disbursements, the said claim would have been waived by his having

made a motion to withdraw without any mention of disbursements and any prayer that he be allowed the same.

FIFTY-SECOND: That plaintiff, upon Information and Belief, is not indebted to defendant in any amount:

(1) Since the agreement retaining defendant provided: "Expenses incurred in your individual case will be deducted from the gross settlement at the time of disbursement" and defendant voluntarily retired from the case before he had achieved a Judgment or a settlement, "gross" or other, and had not performed any act capable of creating a fund from which money could be disbursed.

(2) Since to a large extent the alleged disbursements are spurious, not having been made, and not haying been made on plaintiff's behalf and since they are not, to a large extent expenses appropriate to law , to be borne by plaintiff, and which, upon information and belief, were actually paid by defendant Trust.

FIFTY-THIRD: On or about July 29, 1995 plaintiff's attorney received a letter from Downs, Rochlin and Martin, P.C. demanding payment of $34,699.46 and threatening to go to arbitration to collect the same.

FIFTY-FOURTH: Section 487 of the Judiciary Law of the State of New York provides as follows:

§ 487. Misconduct by attorneys

An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or, willfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed

therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

Added L.1965, c. 1031, § 123. (Emphasis added)

FIFTY-FIFTH: That the application by defendant for leave to withdraw from the case was false and untrue as hereinabove set forth in paragraphs "16th" and "17" hereof.

FIFTY-SIXTH: That by said statement deceived both the court and the plaintiff.

FIFTY-SEVENTH: As is shown heretofore defendant deliberately delayed preparing and trying the case against the Trust and against A.H. Robins Co., Inc., the original defendant, for more than 13 years from the date defendant was retained for no purpose related to plaintiff's welfare but for purposes of his own as shown by all of the foregoing allegations and delayed the same until after the A.H. Robins Chapter 11 bankruptcy.

FIFTY-EIGHTH: That such delay is a misdemeanor, and commands that treble damages be assessed against the attorney in favor of his client for the damages occasioned by such delay.

FOR A THIRD CASE OF ACTION

FIFTY-NINTH: That defendant said to plaintiff and represented to plaintiff that he was an expert in the fields of products liability and negligence and was endowed with great skill therein and defendant intended plaintiff to rely upon said statement.

SIXTIETH: That plaintiff believed the said representations and in reliance thereon retained defendant and entered into an agreement of retainer, retaining the defendant as her counsel to bring suit based upon her injuries suffered as a result of her having worn the Dalkon Shield.

SIXTY-FIRST: That plaintiff said representations were false, and known by him to be false: that defendant was not in fact an expert in the fields mentioned above and was ignorant of all of the basic principals

thereof as is shown in paragraph Twenty-Fifth hereof.

SIXTY-SECOND: Any reasonably competent lawyer, not an expert in this field, would have found Fitzpatrick v . A.H. Robins Co., Inc. in less than an hour's research, and the other three cases cited above in not more than 2 additional hours: that in those four cases he would have discovered the existence of his ignorance and the means of correcting his gross errors.

SIXTY-THIRD: That the plaintiff was damaged as a result of said misrepresentations in the manner set forth in paragraphs "Forty-Seventh" and "Forty-Eighth" and in other paragraphs hereinabove set forth, and by the misrepresentation contained in defendant's motion to withdraw from plaintiff's case by the fact that plaintiff will be required to defend a worthless action by defendant to recover disbursements, which would have been extinguished if the true facts had been disclosed.

SIXTY-FOURTH: That all of the misrepresentations made by defendant as hereinabove described were made to deceive the plaintiff and plaintiff believed the same, and acted in reliance thereon.

SIXTY-FIFTH: That plaintiff was damaged by the said representations and her reliance thereupon as hereinabove set forth.

WHEREFORE plaintiff demands judgment against defendant for the sums she would have recovered against A.H. Robins Co., Inc. in the amount of $1,570,000.00 in compensatory damages and $3,750,000.00 in punitive damages, and $5,000.00 as the reasonable cost to plaintiff of defending against defendant's imminent suit for disbursements, and the amounts named above in this prayer be tripled in accordance with the provisions of §487 of the Judiciary Law plus costs and disbursements and such other and further relief as the court deems proper in the premises, including punitive damages against the defendant on account of his malpractice and breach of his duty of fidelity.

Dated: Yonkers, New York
August 15, 1995

Yours etc.,

RICHARD W. FULFREE
Attorney for Plaintiff
612 E. Grassy Sprain Road
Yonkers, New York 10710
(914) 961-7500

LISMAN & LISMAN
ATTORNEYS AT LAW
101 COLLEGE STREET
BURLINGTON, VERMONT 08402

June 15, 1981

Ellen Surlak
115 Bennett Avenue
Yonkers, NY 10701

Dear Ellen:

You have asked my office to initiate an investigation on your behalf and thereby seek to prove that the Dalkon Shield IUD has caused you medical injuries and complications. You have furnished my office with medical authorizations and names and addresses of health care organizations and professions whom we have contacted to obtain copies of medical records. We now have copies of those records listed on the attached page.

Based on examination of your records and the information you have furnished, my opinion is you have a proper claim to make against, the A.H. Robins Company, Inc., the manufacturer of the Dalkon Shield. I believe initiation of a claim and lawsuit will result in a successful recovery for you. In my opinion, your recovery will substantially exceed any expenses which may by incurred in the preparation of your case. Based on the value of settlements and verdicts in similar claims against the A.H. Robins Company and the extent and nature of your injuries, I also will seek punitive damages for you, I expect to recover adequate compensation for you which, may also be available in your case.

As a result of other cases and claims I have handled against the A.H. Robins Company, I believe suit should be filed promptly in your jurisdiction so that further delay is avoided insofar as the statute of limitations is concerned. We can expect the A.H. Robins Company to raise a statute of limitations defense in your case, as it does now in practically all cases, although I believe the law of your jurisdiction will permit you to proceed with your claim against the manufacturer.

In my earlier letter to you I described our fee schedule, but I would like to state it again for you so you may ask me any questions that you may have. I will agree to represent you on the basis of a contingent fee agreement. This means you owe me no attorneys' fees whatsoever unless a successful recovery occurs in xxx matter. If settlement results before or upon the filing of the suit but before substantial trial preparation in your individual case, then the contingent fee will be one third of the gross recovery. If we are required to begin substantial trial preparation for your individual case, then the contingent fee basis will be forty percent of the gross recovery. If an appeal is required, then you and I will reserve the right to negotiate a fee for that appeal.

Expenses incurred in your individual case will be deducted from the gross settlement at the time of disbursement. I will keep you periodically informed of all such expenses but do not believe they will be large unless I am require to actually try your case. The trial in some cases has taken over three months, but we expect our current trial preparation for all clients to reduce substantially the length of trial in your case. Nevertheless, we must be prepared for a lengthy trial since Robins' tactics include attempting to tire and wear out the plaintiffs.

In addition to the individual expense, in case of settlement or verdict, we will also expect you, (as we have all individual Dalkon Shield clients), to bear a portion of the group expenses. These expenses relate to the research which we have conducted at MIT, Harvard and other facilities. This amount will vary, based upon both the numerator and denominator of my individual cases at the time of settlement. At present each client's group expense has amounted to $2,000. I expect in the future this amount will not substantially increase and may well decrease.

Dalkon Shield cases like yours require careful preparation and investigation. I will retain total control of your case and will be lead counsel at time of trial. I will, however, want to obtain the assistance of a competent and qualified attorney in your state to assist with matters of a local nature. I may also have one of my co-counsel in the IUD recall case in Boston participate. Such attorneys, to the extent they are involved in your case, will be paid by me, and you will have no further legal fees or expenses as a result. Nevertheless, in my best judgment, the assistance of such other attorneys will enhance the settlement value or jury verdict of

your case.

I would like to place your case in suit in the near future in Federal Court in your state. If you have any questions or concerns with regard to this letter, I would be happy to speak with you at your convenience.

For my files, I would appreciate your signature, indicating your acceptance of this letter proposal and your request for me to commence a lawsuit as described above on your behalf. I will look forward to hearing from you and would appreciate your returning this letter to me at your earliest opportunity. A copy of the letter is enclosed for your file.

Very truly yours,

Robert E. Manchester

I accept the terms of this letter proposal and request that you commence a lawsuit on my behalf as described in this letter.

Date: June 24, 1981 [signed] Ellen P. Surlak

VERMONT-BURLINGTON MARTINDALE-HUBBLE DIRECTORY
1993

MANCHESTER LAW OFFICES
PROFESSIONAL CORPORATION

ONE LAWSON LANE
P.O. BOX 1459
BURLINGTON, VERMONT 05402-1459
Telephone.- 802-658-7444
FAX. 802-658-2078

Personal Injury, Products Liability, Dalkon Shield IUD Personal Injury Litigation, Wrongful Death, Insurance Bad Faith, Professional Malpractice and Commercial and Environmental Litigation.

FIRM PROFILE: Manchester Law Offices focuses its practice on representing plaintiffs in large and complex cases. We have recently been successful litigating cases involving environmental clean-ups, products liability (including the Dalkon Shield), medical malpractice and insurance bad faith issues. We welcome cases that involve challenging, complex or untried issues.

ROBERT F. MANCHESTER, born Richmond, Virginia, November 1, 1944; admitted to bar, 1969, Colorado; 1970, Vermont and U.S. District Court, District of Vermont; 1973, U.S. Court of Appeals, 2nd Circuit; 1974, U.S. District Court, Northern District of New York; 1984, U.S. Court of Appeals, 4th Circuit; 1985, U.S. Court of Appeals, 10th Circuit. Education: Brown University (A.B., 1966); University of Colorado (J.D., 1969). Co-editor: "Bad Faith Law Update," Mathew Bender, 1986-1989. Author: "Consequential and Punitive Damages Arising out of Breach of Insurance Contract," Vermont Bar Journal, April, 1979. Contributor and Author: "Long Term Effects of IUDs - Problems of Proof," The Association of Trial Lawyers of America ("ATLA") 1983 Annual Convention Reference Materials; "Third Party Bad Faith Actions," TRIAL, August, 1984; "Successful Computer Application," TRIAL, January, 1989; "Getting the Most from Your Personal Computer Wording Processing System," TRIAL, January, 1990; "Law Office Organization in the Computer Age," TRIAL, 1991. The ATLA Press Series:

"Wrongful Death Litigation" review of wrongful death and survival statutes and related problems of proof; ATLA 1984 Boston, MA seminar; "Punitive Damages and Injunctive Relief for Failure to Recall a Defective Product," Vermont Bar Association: "Remedies for Breach of Insurance Contract;" A 1987 Update; "Consequential and Punitive Damages Arising out of Willful Breach of Insurance Contract," (1987); "Determining and Proving Damages,"(1987); Vermont Trial Lawyers Association" Presentation of Economic Loss in Personal Injury Action; Techniques for the Trial Lawyer and Trial Demonstration," (1988); "The Social and Economic Consequences Produced by the Delayed Recall of the Dalkon Shield," Product Liability Law Review, Vol. 1, Issue 1 (1988); Vermont Bar Association and Vermont Law School: "Federal Practice in Vermont; Ten Under-Utilized Discovery Techniques (1989); National Business Institute: "Trial Advocacy in Vermont; Techniques for Successful Direct and Cross Examination in Civil Cases (1989). Plaintiffs' Trial Counsel, In re Dalkon Shield Personal Injury Litigation, MDL-211, 1980-1985. Co-Chair, Dalkon Shield Claimants' Committee, In re A.H. Robins Company, Inc., Chapter 11 proceedings (1985-1986). Listed, Best Lawyers in America, 1989-1990, 1991-1992. Member: Vermont (Chairman: Committee on Jury Panel Instructions, 1972-1975; Tort Law Section, 1976-1979; Vice-Chairman, Consumer Law Section, 1975-1976) and American (Member, Litigation Section) Bar Association; Vermont Trial Lawyers Association (CLE Programs Chair, 1987-1989; Member, Board of Governors, 1991); The Association of Trial Lawyers of America (State Committeeman, 1976-1978; 1988-; Member: Board of Governors, 1978-1985; Products Liability and Medical Malpractice Exchange Committee, 1983-1985; Key Man Committee (renamed, Political Outreach Steering Committee), 1985-1988; Public Affairs Committee, 1987-1989); Pre-Trial and Discovery Abuse Commission Subcommittee, 1989-1989; Co-Chair, Computer Use Committee, 1988-); Trial Lawyers for Public Justice (Sustaining Founder; Member, Board of Directors 1984-1989). Lifetime Fellow, The Roscoe Pound - American Trial Lawyers Foundation. Certified as a Civil Trial Advocate by the National Board of Trial Advocacy. REPORTED CASES: Cavanaugh vs. Abbott Laboratories, 145 Vt. 516. 496 A.2d 154 (1985); Gerrish Corp. vs. Universal Underwriters Insurance Co., 745 F.Supp 358 (D.Vt. 1990), aff'd. 947 F.2d 1023 Phillips vs. Aetna Life Ins. Co., 473 F.Supp. 994 (D.Vt. 1979).

PATRICIA S. ORR, born Long Beach, California, September 19, 1954, admitted to bar, 1982, New York; 1983, U.S. District Court, Eastern and Southern Districts of New York; 1986, New Jersey, U.S. District Court Northern District of New York and District of New Jersey; 1990, Vermont and U.S. District Court, District of Vermont; 1991, U.S. Court of Appeals Second Circuit. Education: Elmira College (B.S., summa cum laude, 1976); Fordham University (J.D., 1981). Phi Beta Kappa. Member: Vermont and American Bar Associations; The Association of Trial Lawyers of America. REPORTED CASES: Republic National Bank of New York v. Eastern Airlines, Inc. 815 F.2d 232 (2d Cir. 1987).

LEGAL SUPPORT PERSONNEL

LEGAL NURSE CONSULTANTS

TINA L MULVEY, born Takoma Park, Maryland, August 10, 1956. Education: Southern College (A.S., with honors, 1976); Johnson State College (B.S., with honors, 1990). Registered Nurse, Vermont. Member: American Association of Legal Nurse Consultants (Vermont Chapter, 1992); Vermont Paralegal Association; The Association of Trial Lawyers of America.

ROSEMEREYL S. HARPLE, born Ridgewood, New Jersey, December 22, 1951. Education: Skidmore College (B.S., in Nursing, with honors, 1974); Champlain College. Member, Periclean. Registered Nurse, Vermont, 1976. Member: American Association of Legal Nurse Consultants, (Secretary, Vermont Chapter, 1991-1992); Vermont Paralegal Association; The Association of Trial Lawyers of America. CONCENTRATION: Dalkon Shield Administration.

MAUREEN P. TREMBLAY, born Bayshore, New York, December 20, 1951. Education: Mount Wachusetts Community College (A.S., with honors, 1976); Johnson State College. Registered Nurse, Massachusetts, 1976 and Vermont 1987. Member: American Association of Legal Nurse Consultants, (President, Vermont Chapter, 1992); Vermont Paralegal Association; The Association of Trial Lawyers of America. CONCENTRATION: Dalkon Shield Administration.

[marked] Exhibit C

SOUTHERN DISTRICT OF NEW YORK

ELLEN FULFREE
115 Bennett Avenue
Yonkers, New York 10701,

Plaintiff

v.

DALKON SHIELD
CLAIMANT'S TRUST
Richmond, Virginia
Defendant

Index #81 CV 5116

MOTION TO WITHDRAW

Manchester Law Offices, P.C., attorneys for the Plaintiff in this action, respectfully requests leave of this Court to withdraw as the attorney of record on behalf of the Plaintiff.

1. In light of the communications between myself and the Plaintiff, it is my opinion that I cannot appropriately represent her in this case, and accordingly should withdraw. In a motion like this, a lawyer seeking to withdraw is necessarily constrained from advising the Court of the nature of the circumstances which led to the lawyer's request to withdraw. See Disciplinary Rule 2110. Nonetheless, I can represent to the Court that my decision involve irreconcilable differences regarding the proper management of this litigation.

2. Based upon correspondence with the Plaintiff, the client knowingly and freely assents to the termination. The Plaintiff has not yet retained new counsel, however her husband, Richard W. Fulfree has advised that he will handle the litigation in the interim.

Dated at Burlington, Vermont this 6th day of January, 1994.

MANCHESTER LAW OFFICES, P.C.

By: [signed] Robert E. Manchester
Robert E. Manchester
Attorney for Plaintiff
P.O. Box 1459
Burlington, Vermont 05402
(802) 658-7444

cc: Paul Strain, Esq.
Ellen P. Fulfree
Richard W. Fulfree, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

Plaintiff,

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

AMENDED
NOTICE OF REMOVAL

Docket No. 95-13051

Defendants.

----------x

Defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES hereby file pursuant to the Order of Judge Denny Chin dated January 2, 1996 [copy attached hereto as Exhibit "B"] this Amended Notice of Removal of the above-described action to the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007 from the Supreme Court of the State of New York, County of Westchester, where the action is now pending, as provided by Title 28, U.S.C. Chapter 89, and state:

1. This cause was commenced in the Supreme Court of the State of New York, County of Westchester by filing of a Summons and Complaint on or about August 15, 1995, and process was served upon removing defendants on August 23, 1995. A copy of plaintiffs complaint is annexed hereto as Exhibit "A".

2. The action is a civil action for compensatory damages based upon alleged lawyer malpractice.

3. The ground for removal is that diversity jurisdiction exists, as there is complete diversity of citizenship and the amount in controversy exceeds the sum or value of $50,000.

4. Plaintiff contends this matter in dispute exceeds the sum of fifty thousand dollars ($50,000) exclusive of interest and costs.

5. At the time of commencement of this action, plaintiff was a citizen of New York and resided at 115 Bennett Avenue, Yonkers, New York. Defendant MANCHESTER LAW OFFICES is a citizen of Vermont, is deemed to have a residence at One Lawson Lane, Burlington, Vermont 05401, is incorporated only in Vermont, and has a principal place of business only in Vermont at the above address. Defendant ROBERT MANCHESTER is a citizen only of Vermont and resides at 5 Pond Road, Shelburne, Vermont 05482.

6. A copy of all pleadings, process, and orders served upon defendants upon commencement of this lawsuit is filed with this Amended Notice.

7. Defendants will give written notice of the filing of this Amended Notice as required by 28 U.S.C. Section 1446(d).

8. A copy of this Amended Notice will be filed with the Clerk of the Supreme Court of the State of New York, County of Westchester, as required by 28 U.S.C. Section 1446(d).

9. The original notice of removal was filed within thirty days after the receipt by defendants of a copy of the initial pleading setting forth the claim for relief upon which the action is based. 28 U.S.C. Section 1446(b). This Amended Notice is being filed with leave of Court, pursuant to the Order of Judge Denny Chin dated January 2, 1996 [copy attached hereto as Exhibit "B"].

WHEREFORE, defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES respectfully request that this action proceed in this Court as an action properly removed to it.

Dated: January 6, 1996
New York, New York

Respectfully submitted,
KOPFF, NARDELLI & DOPF

By: [signed] Martin B. Adams
MARTIN B. ADAMS
Attorneys for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

KOPFF, NARDELLI & DOPF
COUNSELLORS AT LAW
440 NINTH AVENUE
NEW YORK, NEW YORK 10001-1688
(212) 244-2999
Telecopier: (212) 643-0862

February 1, 1996

Richard W. Fulfree, Esq.
Treetops Carriage House
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

Re: Fulfree v. Manchester
Docket No. 95 Civ. 7723 (DC)
Our File No. 69-01

Dear Mr. Fulfree:

Receipt is acknowledged of plaintiff's Notice of Appeal. The Order of Judge Chin is an interlocutory order from which there is no right of immediate appeal. Please withdraw your Notice of Appeal.

Also, now that your motion to remand has been adjudicated, please serve an answer to defendants' counterclaim. Thank you for your attention to this matter.

Very truly yours,

KOPFF, NARDELLI & DOPF

By: [signed] Martin B. Adams
MARTIN B. ADAMS

KOPFF, NARDELLI & DOPF
COUNSELLORS AT LAW
440 NINTH AVENUE
NEW YORK, NEW YORK 10001-1688
(212) 244-2999
Telecopier: (212) 643-0862

March 11, 1996

Richard W. Fulfree, Esq.
Treetops Carriage House
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

Re: Fulfree v. Manchester
Docket No. 95 Civ. 7723 (DC)
Our File No. 69-01

Dear Mr. Fulfree:

The Order of the United States Court of Appeals for the Second Circuit dated March 1, 1996 grants plaintiff's motion only insofar as dismissal for failure to file Forms C and D is vacated. However, your application to treat your appeal as a mandamus application was not granted and, as discussed in prior correspondence, the Order of Judge Chin is an interlocutory order from which there is no right of immediate appeal.

Accordingly, I respectfully request that plaintiff withdraw her appeal, to avoid the need for judicial intervention. Thank you for your attention to this matter.

Very truly yours,

KOPFF, NARDELLI & DOPF

By: [signed] martin B. Adams
MARTIN B. ADAMS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
ELLEN P. FULFREE,

NOTICE OF MOTION
FOR REMAND TO SUPREME
COURT-WESTCHESTER COUNTY

Plaintiff,

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Index No. 95-13051
Judge Assigned:
HON. DENNY CHIN

Defendants.
----------x

S I R S :

PLEASE TAKE NOTICE that upon the Statement of RICHARD W. FULFREE, the attorney of record herein, duly signed by him on the 2nd day of October, 1995 and upon the affidavit of ELLEN P. FULFREE, duly sworn on the 29th day of September 1995 and upon the pleadings and proceedings heretofore had herein, the plaintiff hereby moves this Court at a term thereof on the 20th day of October, 1995 at 40 Foley Square, New York, New York 10007 for an order remanding this cause to the Supreme Court, Westchester County, despite the Notice of Removal heretofore served by defendant and granting such other and further relief as the Court deems proper in the premises.

Dated: Yonkers, New York
October 2, 1995

Yours etc.,

[signed] Richard W. Fulfree
RICHARD W. FULFREE (1268)
Attorney for Plaintiff
612 E. Grassy Sprain Road
Yonkers, New York 10710
(914) 961-7500

TO: KOPFF, NARDELLI & DOPF, ESQS.
Attorneys for Defendants
440 Ninth Avenue
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
ELLEN P. FULFREE,

STATEMENT IN SUPPORT OF MOTION TO REMAND

Plaintiff,

-against-

Index No. 95-13051

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Judge Assigned:
HON. DENNY CHIN

Defendants.
----------x

RICHARD W. FULFREE shows to the Court and alleges:

I am the attorney of record for plaintiff in the above entitled matter, and make this statement in support of a motion to remand this case to the Supreme Court Westchester County, in which Court this case was commenced by plaintiff and from which it has been moved by defendant's notice of removal.

The notice of removal bears date of September 6, 1995 and shows a date of filing in the United States District Court, Southern District of New York on September 7, 1995. It removes the case from Supreme Court, Westchester County "to the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007". The notice of removal was received by me in the mail on September 18, 1995. A true copy of the notice of removal is annexed hereto and marked Exhibit 1 hereof.

The notice of removal is defective upon a number of grounds which are

set forth below. No cases will be cited herein, but the cases, statutes and rules sustaining plaintiff's position will be set forth in a memorandum of law to be filed herein or shortly hereafter.

1. The notice of removal says: "Defendant Manchester Law Offices is deemed to have a residence at One Lawson Lane, Burlington, Vermont 05401." The law requires that both the State of incorporation and the address of the corporation's principal place of business be set forth. No state of incorporation is set forth and a place where the corporation "is deemed" to have a residence is not the required statement revealing the address of the corporation's principal place of business.

2. The law requires that the notice of removal be signed by the "attorney of record". This notice of removal is signed as follows:

"Respectfully submitted,
KOPFF, NARDELLI & DOPF
By
MARTIN B. ADAMS
Associated with the Firm
Attorneys for Defendants
40 Ninth Avenue
New York, New York 10001
(212) 244-2999

Someone who is merely "Associated with the Firm" is not the attorney of record and is no part of the attorney of record. Even a partner who signs in the manner in which Mr. Adams has signed here fails to comply with the statute. Such a partner is required to place his own veracity on the line and not that of his firm. This follows inevitably from the fact that Rule 11 provides for such an unsworn signature to serve the function traditionally served by an oath taken before a judge or a notary public. Kopff, Nardelli & Dopf, Esq. have not put their veracity on the line, and mechanically could not do so. Rule 11 requires that one of the partners sign and thus expose himself to sanctions in the event an untruth or other wrong or defect eventuates.

3. The statute requires that a notice of removal set forth the district and division to which removal is sought to be removed. Here the

White Plains Division is where plaintiff would be entitled by law to have this case tried, if it were in federal court. More important, the White Plains Division of the Southern District is where the state action was pending. This notice of removal fails to state the White Plains Division of the Southern District of New York but affirmatively designates 1140 Foley Square, New York, N.Y. 10007". The writer hereof has communicated with the Clerk's Office in Federal Court, White Plains, which assured him that the White Plains Courthouse and its judges and employees constitute a Division of the Southern District of New York. The notice of removal in its paragraph 5 states that plaintiff resides at 115 Bennett Avenue, Yonkers, N.Y. This alone establishes that plaintiff would be entitled as a matter of law to have a Federal case, in which she is plaintiff, tried in White Plains. Foley Square is not the place where such a Federal Place would be tried. The law requires that a notice to remove shall be filed in the district and division where the state action is pending. In this case the state action was brought in Supreme Court, Westchester County, which is located a few hundred yards from the White Plains Division of the Southern District of New York.

4. The policy of the law, as set forth in the Federal cases, is strongly against removal from state courts, and the burden of proof and of persuasion rests upon the party, removing the case, to prove that the facts justify removal exist and that the papers (notice of removal) comply in every respect with the requirements of law.

5. The policy underlying removal has been held to be mainly to avoid the sad spectacle of some poor benighted defendant unacquainted with the law and procedure in a state court, here N.Y., having to come here as a confused yokel to defend himself in what to him is a foreign and therefore hostile sovereignty. Such a policy is not called into play here.

a) Defendant in this case stated to plaintiff in 1981 and on other occasions that he had many cases in New York State, and many others throughout the United States. Plaintiff and the undersigned believed such statements to be true. Therefor this defendant comes to New York, not as a barefoot yokel deceived and confused, but as he claimed an experienced counsel familiar with the law and procedures in New York. Defendant told plaintiff that he had, in addition to his cases in New York and elsewhere in the United States, about 1000 cases in the United Kingdom

alone. Thus it appears, according to defendant, that he is not dis dvantaged in any jurisdiction, but a lawyer who has eagerly sought business in various jurisdictions other than Vermont, and represented to his clients that he was comfortable in dealing with foreign sovereigns, alien to Vermont.

b) Equally important, we can conclude with confidence that, since this is a malpractice case, the attorneys for the defendant represent a malpractice insurance carrier, which no doubt has an office in the State of New York and elsewhere in the several states. That carrier is no stronger to the New York courts, and is no doubt very much at home here and in many other states.

c) Most important, the diversity of citizenship in this case is more apparent than real. As the affidavit of the plaintiff shows, the defendant actively solicited cases in the State of New York by a person who was employed here by the New York Post. He solicited plaintiff's case here. It is not possible to state whether that person was paid by the defendant for her efforts to steer New York cases to defendant. Paid or unpaid, that person was defendant's agent for the purpose of acquiring cases for him at his lair in Vermont.

The cream of the jest is that defendant was not then, in 1981, admitted to practice in the U.S. District Court of the Southern District of New York, and was, and is not now, admitted to practice there. Annexed hereto as Exhibit 2 is a letter, responding to my inquiry, stating that there is no record of any admission date for defendant in the Southern District of New York. Equally important, examination of Martindale Hubbell, defendant's Exhibit B to the notice of removal, discloses that he does not claim to be admitted to practice in the Southern District of New York. The page of said Law Directory dealing with defendant follows as Exhibit B of the notice of removal and shows that he does not even claim to be admitted in the Southern District of New York, even now.

Strangely defendant commenced action on behalf of plaintiff originally in Maryland, transferred it to Kansas, and thereafter to District Court New York. From Martindale Hubbell and defendant's Exhibit B, it appears that he was not admitted to a district court in Kansas, nor to a district court in Maryland. See Exhibit 3 hereof and the defendant's letter of

11/14/84 and Exhibit 4, defendant's letter of October 16, 1984. Once it became clear that this is not one of the cases where he could achieve a settlement for plaintiff, defendant abandoned his efforts on behalf of plaintiff, and eventually abandoned the case and made a motion to withdraw entirely.

Exhibits 3 and 4 are letters from defendant dated 1984 to plaintiff disclosing that this case formerly pended in Maryland and Kansas in that order. From Martindale Hubbell (Exhibit B of the notice of removal) it is clear that the defendant was not admitted in any of the U.S. District Courts where the case has pended. Therefor he was not qualified to try the case in any State court. He simply was unable to try this case at any time before he withdrew from the case in 1995.

Equally important, it was professional misconduct for him to commence an action in a court to which he was not admitted to practice and for him to transfer the case to a court in which he was not admitted to practice. It is misconduct not only to try a case in a court to which an attorney is not admitted, but also is misconduct for such a lawyer to even commence an action in such a court, to effect a transfer thereto.

There came a juncture in 1993 when two of the attorneys for the defendants, Dalkon Shield Claimants Trust, made a motion in the U.S. District Court, Southern District of New York and were admitted pro hoc vice. Those were Paul Strain, Esq. and Elizabeth Honeywell, Esq. Annexed hereto and marked Exhibit 5 hereof is the order of the District Court granting their application to be so admitted in the Southern District. Service of the said order was made upon the current defendant on December 21, 1993 as is seen from the certificate of service which is part of the exhibit. On December 21, 1993 this defendant was thus told very plainly that if he intended to try this, he needed to get off his rocking chair, and apply to be admitted in the Southern District of New York either as a permanent member of its bar or pro hoc vice. He never was admitted. He was not an attorney at law in the New York, or Kansas, or Maryland District Courts.

The inference is clear and compelling that defendant solicited and obtained a retainer from the plaintiff whose stated purpose was for defendant to conduct a case on behalf of plaintiff, and to conduct a trial of

the case, unless a suitable settlement was secured before trial. It is plainly evident that he never intended to try plaintiff's case, and legally was not in a position to do so, and was not qualified to try a case in any of the 3 districts of Federal Court in which plaintiff's case has appeared. 13 years passed before defendant abandoned this case. Defendant's conduct constituted a common law fraud, albeit a promissory fraud.

It is therefor submitted that defendant, as part of the fraud, created a merely colorable diversity of citizenship, and therefor is estopped to rely on diversity of citizenship in his removal proceedings and the case should be remanded to Supreme Court, Westchester County.

6. The notice of removal served upon the Supreme Court, Westchester County was directed simply to the "Clerk of the Court". It is therefor defective. The Constitution of the State of New York provides:

"c. The clerks of the several counties shall be the clerks of the Supreme Court..."

Therefor, to be valid the notice of removal should have been addressed to the "Clerk of the County of Westchester" and served upon him.

7. Rule 5 of the Rules of the Southern and Eastern Districts of New York in a special portion provides as follows:

Rule 25. Removal of Cases from State Courts

(a) [repealed].

(b) If the court's jurisdiction is based upon diversity of citizenship (28 U.S.C. § 1332) the petition for removal shall set forth the states of citizenship and residence, address of each party named in the caption and, in the case of a corporation, the state of incorporation and of its principal place of business, regardless of whether service of process has been effected on all parties. If such information or a designated part is unknown to defendant, defendant may so state, and in that case plaintiff within twenty (20) days after removal shall file in the office of the clerk a statement of the omitted information.

(c) Within twenty (20) days after filing the petition and bond, the petitioner shall file with the clerk a copy of all records and proceedings in the state court.

(d) Upon entry of an order, remanding the case to the state court, the plaintiff shall deposit with the clerk a copy to be certified and mailed by the clerk to the clerk of the state court. (Emphasis added)

On the face of the "Notice of Filing, Notice of Removal" from the Supreme Court, County of Westchester there appears the following: "A true and correct copy of Notice of Removal with the Clerk of the Supreme Court of N.Y., County of Westchester effects a removal, etc." This statement negates any possibility that a certified copy of the notice of removal was ever served or furnished to anyone, let alone to the proper clerk, to wit, Clerk of Westchester County.

Subdivision 3 of the rules requires the filing of a "bond" as part of the "petition for removal" by a "notice of removal". But the Rule has not been changed. Thus in the Southern District it is still mandatory that a bond be given as a part of proceedings to remove. Here there is no bond and the proceedings are fatally defective.

WHEREFORE plaintiff respectfully asks that an order be entered in this action remanding this case to the Supreme Court, Westchester County plus the costs and disbursements of this motion and granting such other and further relief as the Court deems proper in the premises.

Dated: Yonkers, New York
October 2, 1995

[signed] Richard W. Fulfree
RICHARD W. FULFREE (1268)
Attorney for Plaintiff
612 E. Grassy Sprain Road
Yonkers, New York 10710
(914) 961-7500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
ELLEN P. FULFREE,

AFFIDAVIT

Plaintiff,

Index No. 95-13051
-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Judge Assigned: HON. DENNY CHIN

Defendants.
----------x

State of New York :
: ss
County of Westchester :

ELLEN P. FULFREE, being duly sworn deposes and says:

I am the plaintiff in the above entitled case and make this affidavit in support of plaintiff's motion to remand this action to the Supreme Court, Westchester County.

The complaint in this action is before the Court as an exhibit filed with the notice of removal. I hereby swear to all the material contained in the complaint in the precise manner in which I swore to the verified complaint in my verification thereof. Attached to the complaint is a letter from defendant to plaintiff dated June 15, 1981 and an acceptance of defendant's proposed agreement of retainer dated June 24, 1981 bearing my signature. The genesis and history of said document is as follows: Some time before June 24 I read an article in the New York Post concerning Dalkon Shield lawsuits and was reminded of my own operation and surgically imposed menopause. I called that newspaper and

spoke to a person to whom I was referred. The woman on the phone recommended defendant. I called the defendant from my home on the phone and we discussed the terms on which he would accept my case. Thereafter I received a proposed retainer agreement and a piece at the bottom for my signature which I was supposed to sign in the event I accepted his offer to represent me. I signed the acceptance thereof and mailed the same to the defendant in Vermont. The retainer and its acceptance are Exhibit A of my complaint which is attached to the notice of removal. This retainer was accomplished without my leaving my home on Bennett Avenue, Yonkers. At no time during the pendency of this case have I ever entered the State of Vermont to confer with defendant or for any other purpose connected with this case. This agreement is an exhibit of the complaint and therefore is attached to the notice of removal.

At our first discussion, and on a number of occasions thereafter, defendant told me he had other Dalkon Shield cases pending within New York State, other cases in the several states, and thousands in the United Kingdom alone. He also assured me he was an expert in products liability cases, and that he personally would try my case when it came to trial. These representations were made on many occasions and constituted the basic foundation of our attorney-client relationship. It is important that on page 2 of the retainer agreement, which is part of the notice of removal since it is an exhibit of the complaint in this action, occurs the following: "I will retain total control of your case and will be head counsel at the time of your trial". In the same retainer agreement there appears the following: I will keep you periodically informed of all such expenses but do not believe they will be large, unless I am required to actually try your case. (Emphasis added) I have never heard that any local counsel (N.Y. counsel) ever worked on my case and I agreed to retain him only because of my belief of the false misrepresentations.

If he had not represented to me that he is a products liability expert, and that he would be lead counsel at trial and if I had known that he never intended to bring this case to trial and intended only to seek a settlement, I would never have retained him and would never have anything to do with him. I relied upon his representations and have been damaged thereby. The delay of more than 13-1/2 years before he abandoned the case would be a breach of any retainer agreement or even of a relationship between lawyer and client in which the lawyer makes no

representations of any kind. As is seen in my complaint, such a delay is itself a misdemeanor on the part of the attorney.

Annexed hereto and made a part hereof is Exhibit 6, a memorandum I prepared for my own use on December 14, 1994. It is all true and on December 14, 1994 I had a vivid memory of all of the facts in the said memorandum. My memory of the facts therein is still very clear. The exhibit is based in large part on documents in my possession, both on December 1, 1994 and at the present time. At the appropriate occasion and the proper time, I will produce all of the records. The important thing is that I now have a clear memory of all of the facts set forth in that exhibit and I hereby swear to each and every fact therein set forth.

In the exhibit there is mentioned a stipulation which defendant prepared and which I refused to sign. That exhibit is attached hereto and marked Exhibit 7. It is a stipulation made after the Schachter Test and before I had two tests at Smith, Kline, and Beecham. The first test of Smith, Kline and Beecham was negative and the second indicated that my ancient problem was chlamydia pneumonia. The Schachter test report was vague and unsatisfactory and in the event turned out to be inaccurate, false and crude. But assuming for the moment that it was accurate and impeccable, what interest could my counsel have in pressing me to sign a stipulation accepting a harmful document, either flawed or impeccable? It is not his job to prepare and urge me to sign a document which is damaging to me. He himself told me that signing the stipulation based on the Schachter Test report would be tantamount to a stipulation of discontinuance. I do not believe that it is so and nor does my counsel, but it would be damaging to some degree. If it were damaging in any degree it did not lie in the mouth of my lawyer to urge me to do myself damage in any degree. It was gross misconduct on his part to urge strongly that I damage my own case.

The second stipulation was never prepared. He urged me to sign a stipulation of discontinuance, which I firmly refused to do. It is transparently clear that defendant never intended to try my case. He was frightened of the Robins Co., Inc., of the Dalkon Shield Claimants Trust, or of trial work generally, or possibly he was frightened of all three.

Annexed hereto and marked Exhibit 8 hereof is a letter by

defendant stating that my case had been filed in both Maryland and New York and was pending simultaneously in both districts. (1) What has happened to the defense of "prior action pending?" (2) He was admitted to practice neither in Maryland or New York.

The only possible conclusion is that he was afraid to try my case, and that he put his own interest above mine, to wit, his cowardice, over my welfare. Very important is a letter I received from him dated 6/21/82 concluding "we ... can expect to make an overwhelming case against Robins." That letter is Exhibit 8 hereof.

This it is clear that 1. defendant was not admitted in any of the Federal Courts in which this case has made its appearance, to wit, Kansas, Maryland and New York, 2. He was not eligible to commence a lawsuit in any of those jurisdictions as attorney for a party, 3. He was not an attorney-at-law in any of those jurisdictions, 4. He was mortally frightened of trying this case and sought with might and main to destroy this plaintiff to serve his own interests. His fear and timidity furnish the only conceivable explanation for defendant's holding this case for 13-1/2 years and then abandoning it.

I have studied the statement of Richard W. Fulfree on this motion and find it to be true and accurate in all respects.

WHEREFORE plaintiff respectfully asks for an order remanding. this case to the Supreme Court, Westchester County and granting all other relief prayed in the notice of motion and in the statement of Richard W. Fulfree, Esq. submitted herewith.

[signed] Ellen P. Fulfree
ELLEN P. FULFREE

Sworn to before me this
29th day of September, 1995

[signed] Morton N. Wekstein
NOTARY PUBLIC

[stamped]

MORTON N. WEKSTEIN
NOTARY PUBLIC. State of New York
No. 60-9600500
Qualified in Westchester County
Term Expires August 30, 1996

KOPFF, NARDELLI & DOPF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

ELLEN P. FULFREE,

NOTICE OF FILING
NOTICE OF REMOVAL

Plaintiff,

Index No. 95-13051

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

TO: CLERK OF THE COURT:

YOU WILL PLEASE TAKE NOTICE, that defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES have filed in the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007 a Notice of Removal of this Supreme Court action to the District Court of the United States, Southern District of New York, 40 Foley Square, New York, New York 10007.

A true and correct copy of the Notice of Removal is attached to this notice. The filing of this notice and copy of Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Westchester, effects a removal to the District Court of the United States, and the Supreme Court of the State of New York, County of Westchester may proceed no further, unless this case is remanded. 28

U.S.C. 1446(d).

Dated: September 11, 1995
New York, New York

Respectfully submitted,
KOPFF, NARDELLI & DOPF
By: [signed] Martin B. Adams
MARTIN B. ADAMS
Associated with the Firm
Attorneys for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

[stamped] JUDGE CHIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

NOTICE OF REMOVAL

Plaintiff,

-against-

Docket No.

[stamped] Received, 9/7/95, U.S.D.C. S.D. N.Y.

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

Defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES hereby file this Notice of Removal of the above-described action to the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007 from the Supreme Court of the State of New York, County of Westchester, where the action is now pending, as provided by, Title 28, U.S.C. Chapter 89, and state:

1. This cause was commenced in the Supreme Court of the State of New York, County of Westchester by filing of a Summons and Complaint on or about August 15, 1995, and process was served upon removing defendants on August 23, 1995. A copy of plaintiff's complaint is annexed hereto as Exhibit "A".

2. The action is a civil action for compensatory damages based

upon alleged lawyer malpractice.

3. The ground for removal is that diversity jurisdiction exists, as there is complete diversity of citizenship and the amount in controversy exceeds the sum or value of $50,000.

4. Plaintiff contends this matter in dispute exceeds the sum of fifty thousand dollars ($50,000) exclusive of interest and costs.

5. At the time of commencement of this action, plaintiff resided at 115 Bennett Avenue, Yonkers, New York. Defendant MANCHESTER LAW OFFICES is deemed to have a residence at One Lawson Lane, Burlington, Vermont 05401. Defendant ROBERT MANCHESTER resides at 5 Pond Road, Shelburne, Vermont 05482.

6. A copy of all pleadings, process, and orders served upon defendants is filed with this notice.

7. Defendants will give written notice of the filing of this notice as required by 28 U.S.C. Section 1446(d).

8. A copy of this notice will be filed with the Clerk of the Supreme Court of the State of New York, County of Westchester, as required by 28 U.S.C. Section 1446(d).

9. This notice of removal is being filed within thirty days after the receipt by defendants of a copy of the initial pleading setting forth the claim for relief upon which the action is based. 28 U.S.C. Section 1446(b).

WHEREFORE, defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES respectfully request that this action proceed in this Court as an action properly removed to it.

Dated: September 6, 1995
New York, New York

Respectfully submitted,

KOPFF, NARDELLI & DOPF

By: [signed] Martin B. Adams
MARTIN B. ADAMS
Associated with the Firm
Attorneys for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK
500 PEARL ST.
NEW YORK, N.Y. 10007

[hand written]

September 20, 1995

Dear Mr. Fulfree,

In response to your request on - Robert Manchester - Esq., I have no admission date for him. For further information please contact the Grievance Committee via - District Executive Office @ (212) 637-0500

Sincerely,

Keith C. McLean

[labeled] EXHIBIT 2

MANCHESTER & O'NEILL
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
P.O. BOX 1459
BURLINGTON, VERMONT 05402-1459
802-658-7444

November 14, 1984

Ms. Ellen P. Surlak
115 Bennett Avenue
Yonkers, NY 10701

Dear Pat:

I have requested and obtained a transfer of your case from Federal Court in Kansas to New York. The transfer should be effected within the next 30 days and will thereafter appear on the appropriate court calendar for the Southern District of New York.

Since I expect you case will be scheduled for a status conference in the near future, it is very important to determine how soon your divorce will be granted.

Please keep me closely informed of the progress you make toward resolving the divorce. I will keep you closely informed as to scheduling of your case.

Sincerely yours,
MANCHESTER & O'NEILL, P.C.
By: [signed] Bob
ROBERT E. MANCHESTER

REM/dj
d.317

MANCHESTER & O'NEILL
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
P.O. BOX 1459
BURLINGTON, VERMONT 05402-1459
802-658-7444

October 16, 1984

Ms. Ellen P. Surlak
115 Bennett Avenue
Yonkers, NY 10701

Dear Pat:

Please keep me closely advised as to the efforts you and Richard are taking to resolve your divorce case. After our recent conversation, I did file the stipulation with Judge Black and your case is now dismissed in Maryland.

There has been a great deal of activity in the Dalkon Shield litigation and I believe it will be appropriate for us to seek a return of your case from the Kansas MDL once we can develop some idea of timing for the divorce.

Sincerely yours,
MANCHESTER & O'NEILL, P.C.
By: [signed] Bob
ROBERT E. MANCHESTER

REM/dj
d.282

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT NEW YORK
----------x

ELLEN FULFREE

Plaintiff,

Civil Action No.:
81-CIV-5116
(Keenan, J.)

-against-

DALKON SHIELD CLAIMANTS TRUST

Defendant.

----------x

IT IS HEREBY ORDERED that the motion for the pro hac vice admission of Elizabeth Honeywell and Paul Strain as counsel for the Dalkon Shield Claimants Trust be granted.

Date: _____, 1993

_____ [unsigned]
Hon. John F. Keenan
District Judge

[labeled] EXHIBIT 5

[labeled] EXHIBIT 6

Ellen P. Fulfree
115 Bennett Avenue
Yonkers, New York 10701
(914)476-1811

December 14, 1994

Re: Ellen Fulfree v. Dalkon Shield Claimants Trust
Index # 81 CV 5116

Summary of my personal notes.

Mr. Manchester advised me in August of 1993 that the Claimant's Trust was pursuing as a defense of these cases that the claimant had Chlamydia and that this was the cause of the PID which led to the injuries, and not the presence of the Dalkon Shield. In order for me to have a stronger case against the Claimant's Trust I should have a blood test done that would show if I had been infected with Chlamydia 20 years ago. He told me that if I did not submit to this test voluntarily the Court would order me to do so under Rule 35. I felt that I had little choice in the matter, so I followed his instructions and had my Physician write out the prescription for a chlamydia antibody test and had my blood drawn on August 31, 1993.

I would find out a number of weeks later (September 16th or 17th) that the tests that were ordered by my physician were not done. Instead a different test was done on my blood sample that was never explained to me.

Within two weeks Karen Whalen called me from Mr. Manchester's office and said that the test showed I had a negative result for a current infection and a positive titer of 32. She did not know what the 32 meant exactly, but it could mean a past exposure or infection at some undetermined time. She went on to say that Mr. Manchester would come down to meet with me on September 22 for the purpose of discussing strategies with me.

At this meeting he informed me that I could not go forward with my case because of the test result. He could not explain what the test was, neither its name or what the results meant. He told me that Dr. Schachter would not testify in my case because he could not help me. He informed me that the Judge would "throw out my case" and if I went forward I would spend $50,000 to $60,0000 for expert witnesses and I would suffer all sorts of personal embarrassments if I continued to pursue my case. I asked him to explain the result of the finding of 32 on the lab slip and further why he had suddenly developed this negative attitude to my case which he so enthusiastically pursued for the past 14 years. I told him that I was not convinced that my case was flawed and I wanted to do some research concerning the tests. Subsequently in phone conversations I asked Mr. Manchester to have me submit to another test. I urged this and as I was convinced this test was a [sic] the least inconclusive. At the meeting on September 22, 1993, Mr. Manchester had in his possession a stipulation which was prepared by the Claimant's Trust and which he urged me to sign. He explained to me that signing this stipulation would terminate my case.

I told him I would not sign anything I did not fully understand. During the next few weeks, via letters and telephone conversations, he discouraged my submitting to another blood test, but instead he arranged for a Dr. Cohen, a gynecologist, to speak to me by way of a conference call. Contrary to Mr. Manchester advice I had an identical (the same test request that Dr. Burke wrote on the prescription sent with the first sample) Chlamydia test performed by Smith Kline Laboratories and the results of these test were unequivocally negative for both present and past Chlamydia infections and instead of a lab slip we received a full report.

When I had the conference call with Dr. Cohen I was already armed with the negative report and also hours of research I had undertaken to understand the test and the disease of Chlamydia itself. The conversation with Dr. Cohen did little to interpret the earlier test or answer any questions concerning how the earlier test destroyed my case against the Claimant's Trust.

Dr. Cohen, not knowing, that we had negative results from the second test, agreed that a second blood test should be undertaken and

ironically suggested Smith-Kline Laboratories. Mr. Manchester continued the pressure using the conference and deadline for discovery as reasons for the case to be terminated immediately and further the economic duress hereinabove stated.

On November 3, 1993 I advised Mr. Manchester of the negative test result and sent him a copy of the Smith-Kline report. Again I might point out that the test performed earlier and the SmithKline test were done on identical prescriptions written by the same doctor. On November 5th, Mr. Manchester advised me that the SmithKline test were not good enough. He said, "according to the Trust the test I had done was not the one done in California". What the Trust wanted was a test described as "Chlamydia Species Differentiation Antibody Panel Micro IFA". I again asked SmithKline to do this test, but was informed that I would need a new prescription from my Physician. This was obtained and sent to Smith-Kline and they preformed the test on the sample of blood that I had previously sent them. The results of this test were a borderline positive for past infection at an undetermined time for chlamydia trachomatis and a higher titer for chlamydia pneumonia (this indicated a stronger reaction to the pneumonia organism).

My gynecologist-surgeon who performed my surgery had already advised Mr.Manchester and the Trust in an earlier deposition that the causation of my PID was e.Coli resulting from the use of the Dalkon Shield. For some reason both Mr. Manchester and the Trust attorneys did not seem to want to credit his testimony.

In August when Mr. Manchester first discussed the test with me he told me the Trust would have no case if the test came up negative. I asked him what would happen if it came up positive. He said that the test often showed a "false negative or a false positive results, or if it showed minimal amounts of antigens that that could indicate infection via airborne organisms, such as Parrot Fever". In addition, he said "even if it where accurate the test can not state when the disease was contacted", ie, whether it was a recent infection or an infection contracted 25 years earlier. The Trust attorneys claimed that the test was a "simple blood test" in a letter to Judge Keenan. This is a total obfuscation of the true fact, because only a few laboratories in the county do this test.

In reading over various letters written by the Trust and Manchester the following communications occurred:

Strain asked Manchester about getting a titer test "starting in June of 1993"

Manchester says talk occurred in July of 93.

Lab slip from the California lab says the test was reported on September 3rd.

Strain says in a letter to Judge Keenan (Nov. 20, 1993) that "Mr. Manchester reported orally to me on September 13 that the antibody titer showed evidence of a previous chlamydia infection and that he would meet with his clients to discuss the impact of the results on their case".

Elizabeth Honeywell in a letter to Judge Keenan (Nov. 16th) said that "After informing the Trust of the result, Mr. Manchester requested time to meet with his clients and explain to them the impact of the results on their case".

The first time I heard the results of the test were around the 16th of September from Karen Whalen, the paralegal in Manchester's office. The first time Manchester discussed the test with me personally was on the 22 of September.

From September on Manchester denied ever telling the Trust the results of the test. When on December 6th in Judge Keenan's Court, a lawyer form [sic] the Trust said "Plaintive had Chlamydia tests done and it was positive", I asked him how they knew and he replied "they must have surmised it".

From the 22nd of September when I refused to sign the stipulation that the Trust had prepared for me to sign, stipulating that I had chlamydia, Manchester has tried to intimidate me into giving up the case. (Almost all phone conversations held after Sept. 22 were conference calls with others in his office present)

The following statements are examples of the pressure that Manchester would bring to bear in order to make me to drop my case.

This started from September 22 of 1993 and has continued up to the present.

The costs would run as high as $100,000.
We have no chance to win
The Judge could throw out the case.
The Judge will allow the chlamydia defense.
There is just no way around the Chlamydia issue.

You should concede the Chlamydia issue because it will be less confusing to a Jury.

In his December 5, 1994 letter to me he wrote "In addition, based upon one of our meetings with Judge Keenan, we have learned of his strong views pertaining to the chlamydia defense which he allowed in a Copper 7 case which produced a defense verdict about two years ago".

The cross examination will be very embarrassing to me.

We cannot use Dr. Beals as a witness because "his testimony is impeachable", and his friendship with Richard will be against us.

My record with the WJCS (counselling sessions when my first marriage was dissolving in 1972-73) - "they would use them to make me look bad". Prior to September 1993 he felt there was nothing harmful to me in these most personal records.

Questioning my fidelity to Richard and his fidelity to me. He said, "sit down with Richard and a bottle of wine and bear your lives to each other". He did not want any surprises.

He said on Oct. 3, 1994 that he, believes that it is "not unreasonable to think that the trust would have private investigators looking into our lives". A few minutes after this conference call Tina Mulvey called me back to ask me if I ever indulged in anal intercourse

or had any abscesses in my teeth.

I have asked Manchester to send me an itemized account of costs on many occasions and to date have only received one summary totaling $31,504.16 and dated September 16, 1994.

Richard and I also discovered that the Courts file of my case had been lost. This was in September of 1993. It had to be recreated from the Lawyers files.

[labeled] EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

Plaintiff,

Civil Action No. 81-CV-5116

v.

DALKON SHIELD CLAIMANTS TRUST

Defendant

----------x

STIPULATION OF PARTIES REGARDING CHLAMYDIA TITER

1. Pursuant to request of defendant Dalkon Shield Claimants Trust and agreement of plaintiff Ellen Fulfree, a blood sample for chlamydia Trachomatis antibodies was obtained from the plaintiff on or about September ___, 1993.

2. The sample was tested for the presence of chlamydia trachomatis antibodies at the Chlamydia Laboratory of San Francisco General Hospital on or about September ___, 1993 under the direction of Julius Schachter, Ph.D.

3. The results of the sample were as follows:

Chlamydia Trachomatis IgM antibody titer 1:___
Chlamydia Trachomatis IgG antibody titer 1:___

4. A true copy of the results, as provided to plaintiff's counsel Robert Manchester by the testing laboratory, is attached as Exhibit A.

5. Defendant Dalkon Shield Claimants Trust and Plaintiff, Ellen Fulfree, by their respective undersigned counsel, stipulate and agree to the truth of the foregoing statements.

_____[unsigned]
Paul F. Strain
VENABLE, BAETJER AND HOWARD
1800 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, MD 21201
(410) 244-7400

Attorney for Defendant,
Dalkon Shield Claimants Trust

_____[unsigned]
Robert Manchester
Manchester Law Offices
P.O. Box 1459
Burlington, VT 05402-1459
(802) 658-7444

Attorney for Plaintiff,
Ellen Fulfree

[labeled] EXHIBIT 8

LISMAN & LISMAN
ATTORNEYS AT LAW
P.O. BOX 728
BURLINGTON. VERMONT 05402
802-864-5756

June 21, 1982

Ellen P. Surlak
115 Bennett Avenue
Yonkers, NY 10701

Dear Pat:

I have great news to share with you. On Friday, June 18, 1982, the Appeals Court in California reversed the class action which Judge Williams had ordered. This is excellent news for us. I have not yet read the decision and I will advise you again as soon as I have received the decision. Nevertheless, the newspaper article of June 19, 1982, published in the Burlington Free Press, a copy of which is enclosed, states my views.

I will be in touch with you as soon as I have had an opportunity to review the decision.

Also, there have been some other important developments in your case relating to our evidence. For your assistance, we enclose a copy of our supplementation to Answers to Interrogatories in the recall case. The data contained in this document means that we basically have reached the end of the road for all our research and can expect to make an overwhelming case against Robins.

Sincerely yours,

[signed] Bob
Robert E. Manchester

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

Plaintiff,

AFFIRMATION IN
OPPOSITION

Docket No. 95 Civ. 7723 (DC)

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

MARTIN B. ADAMS, affirms the following to be true under the penalties of perjury:

1. I am an attorney and am a member of the bar of this Court. I am associated with the law firm of Kopff, Nardelli & Dopf, attorneys for defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES in the abovereferenced action.

2. This Affirmation is submitted in opposition to plaintiff's Motion to remand to the state court.

3. This Affirmation is made upon information and belief, based upon the file maintained by your affirmant's office in connection with the above-captioned matter. I have reviewed that file and, on that basis, I am fully familiar with the proceedings heretofore had herein.

(a) Defendants are citizens only of Vermont

4. Defendant Robert Manchester confirms in an Affidavit

annexed hereto as Exhibit "A" that he is a citizen, registered taxpayer, resident, and voter in Vermont, and is not a resident, voter, or citizen of New York. Mr. Manchester also confirms that Manchester Law Offices, P.C. is a professional corporation licensed under the laws of Vermont, and has only one business location (Burlington, Vermont).

5. The "nerve center" of defendants is clearly in Vermont. The day-to-day control of defendants' files, including Dalkon Shield case files, takes place in Vermont. The day-to-day administrative work takes place in Vermont. Income taxes are filed only in Vermont. Defendants do not advertise in New York, and there has been no active solicitation of any cases through the New York Post or its employees (Exhibit "A").

6. Diversity jurisdiction exists in this case, and removal to federal court was properly based upon diversity jurisdiction.

7. Plaintiff's counsel claims diversity is "more apparent than real" [Affirmation of Richard W. Fulfree, Esq., p. 5], and counsel devotes considerable verbage to attacking defendants (Id. at pp. 5-8). Defendants vigorously deny the charges, and Mr. Manchester identifies in his Affidavit the jurisdictions in which he is licensed.

8. More importantly to this motion practice, the allegations raised by plaintiff are irrelevant. Diversity is dependent upon citizenship of the parties, not upon the alleged merits of the claims of negligence. Defendants have proven that diversity jurisdiction exists. Plaintiff's motion to remand should be denied.

(b) Defense counsel's signature

9. Your affirmant is the attorney of record. Your affirmant's signature appears in my individual name, as required by section (a) of Rule 11. That Rule does not require that owners of the lawfirm sign the document; it requires only that the document be signed "by at least one attorney of record in the attorney's individual name..."

10. In the spirit of cooperation, your affirmant has deleted the sentence, "Associated with the Firm" from the signature block. Your

affirmant verily believes that the deletion will cure the objection raised by plaintiff's counsel.

11. Plaintiff's counsel criticizes your affirmant's signature, even though the name is typed underneath. Your affirmant will sign his name in a neater fashion in the future.

(c) The situs of removal

12. The Notice of Removal was filed in the proper District. Removal was effectuated to the Southern District, which has courts held at New York and White Plains. The 1995 Edition to the Federal Civil Judicial Procedure and Rules (West Publishing Co.) does not indicate that the Southern District is divided into divisions [Id. at p. 514], unlike for example Minnesota (which "constitutes one judicial district comprising six divisions"; Id. at p. 511).

13. The Civil Cover Sheet merely asks which location to which the case should be assigned (Exhibit "B"). Defendants selected Foley Square, as the underlying personal injury action on which this legal malpractice action is based is venued in the Southern District, Foley Square.

14. Plaintiff's counsel has notified this Court that he is "designating... the White Plains Southern District Courthouse as the forum to handle this matter." (Exhibit C"). Defendants have not opposed that designation. Accordingly, plaintiff's objection raised in her Motion with respect to divisions is moot.

(d) Service of the Notice of Removal

15. Plaintiff is incorrect to claim that the Notice of Removal is defective. Section 1446(d) provides that a copy of the Notice shall be filed with the clerk of the State court. That was done here: The caption of the Notice of Filing Notice of Removal clearly indicates that the Notice is being filed in the "Supreme Court of the State of New York, County of Westchester", and is directed to the Clerk of the Court (Exhibit "D").

16. A copy of the Notice of Removal was filed with precisely the individual who the statute says must receive a copy: The Clerk of the Supreme Court of the County of Westchester.

17. Plaintiff's counsel claims that Local Rule 25 requires a certified copy of a notice of removal be served upon the Clerk of the Supreme Court, Westchester County. Yet, counsel cites from subdivision (d) of that Rule, which requires that a certified copy of "an order, remanding the case to the state court" be deposited with the clerk. There has been no order of remand issued in this case. Counsel for plaintiff seems to have erroneously misread that section to require a certified copy of the Notice of Removal be deposited.

18. Concerning the alleged need for a bond, it is unclear to what rule plaintiff's counsel is referring. Counsel refers to "subdivision 3 of the rules", without any further specification. In any event, the 1988 amendments to 28 U.S.C. 1446 eliminated the requirement that a surety bond be filed as security.

(e) Remand is neither warranted nor justified

19. Defendants respectfully submit that there is no basis or justification for remand to state court. Plaintiff's motion should be denied.

20. Remand is allowable if there is lack of subject matter jurisdiction or there is a defect in the removal procedure. Here, there is complete diversity of citizenship. Plaintiff is a citizen of New York, and both defendants are citizens of Vermont. As indicated in the attached Affidavit of Mr. Manchester, Manchester Law Offices is incorporated in Vermont and has a principal place of business in Vermont.

21. There are no defects in the Notice of Removal. Remand for procedural defects rests in the sound discretion of the federal court. There is no basis to remand for any defects, as there are no defects - every step taken by defendants to remove has been in strict accordance with the federal statutes and rules. Defendants have demonstrated herein that there is no merit to plaintiffs motion.

22. Defendants have proven the existence of diversity. Defendants have proven that all procedural requirements for removal have been complied with.

(f) Leave to amend tile Notice of Removal is respectfully requested

23. In the event this Court finds that the allegations of defects raised by plaintiff constitute defects, then leave to amend is respectfully requested. The amendment would be to designate White Plains as the courthouse (as plaintiff has already designated, without objection from defendants), and to state explicitly that defendants are citizens of Vermont, and Manchester Law Offices is incorporated in, and has a principal office in Vermont.

24. There would be no prejudice to plaintiff from such amendment. The Notice of Removal explicitly states that removal is based upon diversity, and defendants reside in Vermont while plaintiff resides in New York. Plaintiff has been aware at all times that defendants are citizens of Vermont, as plaintiff and plaintiff's counsel's oral and written communications have been to defendants in Vermont.

25. Defects in a notice of removal are curable by amendment in federal court. The alleged defects raised by plaintiff (which defects defendants deny) are not jurisdictional; removal should be upheld and amendment should be allowed. Attached as Exhibit "E" is a copy of the proposed amended Notice of Removal.

26. Defendants respectfully refer this Court to the annexed Memorandum of Law. That Memorandum cites case law to support defendants' positions that removal was properly effectuated and that remand is not warranted.

27. For all of the reasons stated herein, defendants respectfully request that plaintiff's Motion for an order remanding this case to the Supreme Court, Westchester County be denied.

WHEREFORE, it is respectfully requested that plaintiff's Motion be denied in its entirety, together with such other and further

relief as to this Court seems just and proper.

Dated: October 18,1995
New York, New York

Respectfully submitted,
KOPFF, NARDELLI & DOPF

By: [signed] Martin B. Adams
MARTIN B. ADAMS-0825
Attorney for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

Plaintiff,

MEMORANDUM OF LAW
Docket No. 95 Civ. 7723 (DC)

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.
----------x

Defendants respectfully submit that there is no basis for remanding of this case to state court. Plaintiff's motion to remand should be denied.

(a) Defendants have fully complied with removal procedures

Defendants fully complied with the procedures to effectuate removal. Your affirmant is an "attorney of record" who signed the Notice "in the attorney's individual name", as required by Rule 11.

A copy of the notice served upon plaintiff was filed with the state court clerk to effect the removal. 28 U.S.C. 1446(d). A removal bond is not required under current law. 28 U.S.C. 1446, as amended by 1988 amendments.

(b) Jurisdiction exists based upon diversity of citizenship

This Court has subject-matter jurisdiction over the parties and the controversy based upon diversity of citizenship between the plaintiff and all defendants. There are no local defendants.

Any case that could have been commenced in federal court based on diversity of citizenship can be removed from state court on that ground. 28 U.S.C. 1441(b). As indicated in the Affidavit of Mr. Manchester, annexed hereto as Exhibit "A", both defendants are citizens of Vermont. Manchester Law Offices is a citizen only of Vermont, as it is incorporated in Vermont and has its principal place of business in Vermont. 28 U.S.C. 1332(c).

Plaintiff's counsel observes that defendant has cases in states other than Vermont. Yet, defendants' only office is in Vermont. The day-to-day control of the cases takes place at the Vermont office, the files are kept in Vermont, and all administrative functions take place in Vermont, since that is where the sole office is located (Exhibit "A").

In addition, defendants do not advertise in New York. Defendants file income tax returns only in Vermont (Exhibit "A"). Defendants are obviously most notably present in Vermont, as the "nerve center" for defendants is their [sole] office, which is in Vermont. J.A. Olson Co. v. City of Winona, 818 F.2d 401 (5th Cir. 1987).

Plaintiff's arguments about defendants not being strangers to New York and not needing the protection of federal courts from local state courts are irrelevant. Plaintiff's arguments pertain to situations where there are local defendants, i.e. a defendant is a resident of the state in which the federal court sits. Travelers Indem. Co. v. Sarkisian, 794 F.2d 754 (2nd Cir. 1986). Since protection against local prejudice is the purpose of removal jurisdiction based upon diversity of citizenship, a defendant cannot remove a New York state court case to federal court if the defendant resides in New York. 28 U.S.C. Sec. 1441(b).

In the case at bar, there are no local defendants, under diversity law. Both defendants are residents of, and citizens of Vermont only. Diversity of citizenship existed at the time the state court action was commenced, as well as at the time defendants removed the state court case to federal court.

The reference by plaintiff to defendants' insurance carrier is irrelevant to the issue of diversity. First, the carrier is not a party to

this action. Secondly, the carrier has no office in New York; its only office is in Montana (Exhibit "F").

Accordingly, there is complete diversity of citizenship between plaintiff and all defendants.

(c) Any alleged defects are not jurisdictional; amendment is warranted

Any alleged defects (which defects defendants expressly deny) do not oust the federal court of jurisdiction.

A defect will not make a notice of removal fatally flawed as long as the removal court can ascertain an adequate basis for removal. Harlem River Produce Co. v. Aetna Casualty & Surety Co., 257 F.Supp. 160 (S.D.N.Y. 1965). Defects in the form or content of the removal papers are usually not jurisdictional and may be cured by amendment after removal. Usatorres v. Marina Mercante Nicaraguenes, S.A., 768 F.2d 1285 (11th Cir. 1985).

Defendants have asserted in the Notice of Removal diversity jurisdiction. Even a failure to state a valid grounds for removal (and defendants have stated valid grounds) may be cured by amendment of the Notice, if jurisdiction existed at the time of removal. Gafford v. General Elec. Co., 997 F.2d 150 (6th Cir. 1993). That is particularly true as the allegations of diversity jurisdiction were not omitted. 28 U.S.C. 1653.

Removal based upon diversity is proper, even without the Notice specifying the place of incorporation and the location of the principal place of business. A defendant may amend the Notice of Removal to allege diversity with the requisite specificity. Any alleged defect is only "formal", since diversity in fact exists. Barrow Develop. Co. v. Fulton Ins. Co., 418 F.2d 316 (9th Cir. 1969).

Complete diversity of citizenship exists between the parties. As the case was removable based upon diversity of citizenship, this Court can exercise jurisdiction despite any alleged defects. Loftin v. Rush, 767 F.2d 800 (11th Cir. 1985).

(d) The case law cited by plaintiff is not pertinent

The case law cited by plaintiff's counsel in his Memorandum of Law does not support remand.

Plaintiff places emphasis upon subdivision (c) of section 1441, and states that "diversity alone is no longer a ground for removal" (Memorandum of Law, p. 11). Section 1441(c) allows for remand when state law predominates in a case in which removal was based upon a federal question under section 1331. In the case at bar, defendants removed to federal court based upon diversity of citizenship (not federal question) under section 1332 (not section 1331).

The cases cited by plaintiff are not relevant. For example, in the cases of Morales v. Meat Cutters Local 539, 778 F.Supp. 368 (E.D.Mich. 1991), Holland v. World Omni Leasing, Inc., 764 F.Supp. 1442 (N.D.Ala. 1991), and Martin v. Drummond Coal Co., Inc., 756 F.Supp. 524 (N.D.Ala. 1991), removal was effectuated based upon 28 U.S.C. 1331 and the fact that the actions presented federal questions. Remand was ordered where the degree of relation between state and federal claims was not sufficient.

By stark contrast, defendants in the case at bar removed based upon 28 U.S.C. 1332, based upon diversity. Section 1441(c) and issues of whether state law predominate are not relevant in the case at bar.

In Mason v. IBM, Inc., 543 F.Supp. 444 (M.D.N.C. 1982) and Lang v. American Elec. Power Co., Inc., 785 F.Supp. 1331 (N.D.Ind. 1992), remand was ordered because less than all defendants joined in, or consented to removal. In the case at bar, all defendants joined in the Notice of Removal - and plaintiff does not claim to the contrary.

In Mielke v. Allstate Ins. Co., 472 F.Supp. 851 (E.D.Mich. 1979) and Marler v. Amoco Oil Co. Inc., 793 F.Supp. 656 (E.D.N.C. 1992), the Notice of Removal was not timely filed. In the case at bar, the Notice was timely filed - and plaintiff does not claim to the contrary.

In Nichols v. Southeast Health Plan of Alabama, Inc., 859 F.Supp. 553 (S.D.Ala. 1993), the federal court remanded after federal pre-emption of a state court claim was rejected and subject matter jurisdiction was lost. On the other hand, there is no question that this Court has subject matter jurisdiction over plaintiff Fulfree's claims, as diversity jurisdiction exists.

CONCLUSION

There is no basis for remanding this case to state court. Removal is proper in all respects. Even if this Court finds any alleged defects, those defects are merely "formal", and not jurisdictional, and leave to amend the Notice of Removal accordingly is respectfully requested.

For all of the reasons stated herein, defendants respectfully request that plaintiff's Motion for an order remanding this case to the Supreme Court, Westchester County be denied.

WHEREFORE, it is respectfully requested that plaintiff's Motion be denied in its entirety, together with such other and further relief as to this Court seems just and proper.

Dated: October 18, 1995
New York, New York

Respectfully submitted,
KOPFF, NARDELLI & DOPF

By: [signed] Martin B. Adams
MARTIN B. ADAMS - 0825
Attorney for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

Plaintiff,

- against -

95 Civ. 7723 (DC)

ROBERT E. MANCHESTER and MANCHESTER LAW OFFICES, P.C.,

Defendants.

----------x

AFFIDAVIT OF ROBERT E. MANCHESTER

ROBERT E. MANCHESTER, ESQ. of Manchester Law Offices, P.C. deposes and says:

1. This affidavit is submitted solely to proffer evidence relating to the Plaintiff's allegations set forth in her motion to remand.

2. I moved to Vermont in 1969 upon graduation from law school. Since 1969 I have been a citizen, registered taxpayer and voter in this state. Since 1973 my residential address has been in Shelburne, Vermont. During 1969-1995 I have not owned property, paid taxes, voted or otherwise acted to establish or maintain a residence within the State of New York. Since 1969, I have not been a citizen of New York.

3. In 1981 when I agreed to represent the Plaintiff in the pending action, I was a member of Lisman & Lisman, a Vermont partnership. In 1983 I left Lisman & Lisman to form Manchester & O'Neill, P.C." a Vermont professional corporation. My partner, Jerome F. O'Neill, Esq., withdrew from Manchester & O'Neill, P.C., in 1987

whereupon I changed the name of the firm to Manchester Law Offices, P.C.

4. Since 1987, Manchester Law Offices, P.C., has remained a professional corporation incorporated in accordance with the laws of the State of Vermont.

5. Since its founding, Manchester Law Offices, P.C., (including Manchester & O'Neill, P.C.) has maintained a single business location in Burlington, Vermont. Between 1983-1987, the business address was 95 St. Paul Street. Since 1987, the business address has been 1 Lawson Lane.

6. Manchester Law Offices, P.C. is not incorporated with the State of New York and maintains no offices in New York. Exhibit A attached hereto is a true copy of the firm's 1983 Certificate of Incorporation filed with the Vermont Secretary of State.

7. Since 1983 Manchester Law Offices, P.C. (including Manchester & O'Neill, P.C.) has maintained all office and client files (including but not limited to all Dalkon Shield files) in its Vermont office. It has conducted all of its day to day work (whether administrative or relating to work done on a particular clients' case) in its Vermont office. It has filed income tax returns in Vermont and in no other state and has stated that all work done and income received is fully subject to taxation by Vermont as opposed to some other state.

8. In summary, at all times between the date the Plaintiff filed her action against me and the date of Plaintiff's motion to remand I have remained a citizen of Vermont. Further, my sole business location has remained in Vermont.

9. I am a member in good standing before courts of the following jurisdictions: State of Colorado since 1969; State of Vermont since 1970; United States District Court (D.Vt.) since 1970; U.S. Court of Appeals, 2d Circuit since 1973; United States District Court (N.D.N.Y.) since 1974; U.S. Court of Appeals, 4th Circuit since 1985; U.S. Court of Appeals, 10th Circuit since 1984; United States District Court (S.D.N.Y. ) since 1994; United States District Court (E.D.N.Y. )

since 1994. See Exhibit B attached hereto which is a true copy of my certificate to practice before the Southern District of New York, dated April 26, 1994.

10. I agreed to represent the Plaintiff in an action for personal injuries against the A.H. Robins Co., Inc. in 1981. In connection with that effort I filed an action on her behalf in United States District Court (D.Md.) and thereafter obtained transfer of that action to the related multidistrict litigation (In re A.H- Robins Co., Inc. Dalkon Shield Litigation, MDL-211). Upon remand from MDL-211, I filed a separate action for the Plaintiff in the United States District Court (S.D.N.Y., docket no. 81 CIV 5116) which action was awaiting trial in August 1985 when the A.H. Robins Co., Inc. filed a Chapter 11 bankruptcy proceeding. In 1986 I filed a notice of claim on behalf of the Plaintiff in Richmond, Va. before the United States District Court, E.D.Va., and thereafter represented the Plaintiff before that court until March 11, 1992 when I obtained an order which lifted the stay and allowed the Plaintiff's case to proceed to trial in the Southern District.

11. Apart from listings in publications like Martindale Hubbell, neither I nor any member of Manchester Law Offices, P.C. (including Manchester & O'Neill, P.C.) has advertised in an effort to obtain clients, whether by radio, television, newspaper or other medium. Among other things I have not " ... actively solicited cases in the State of New York by a person who was employed [in New York] by the New York Post" (Fulfree Affidavit dated October 2, 1995, at 5).

12. My retainer agreement with Mrs. Fulfree permitted me to obtain the services of a "competent and qualified attorney in your state to assist with matters of a local nature." (See copy of agreement, attached hereto as Exhibit C). In Maryland, my local attorney was Michael Pretl, Esq. In New York, my local attorney was Paul Rheingold, Esq. Due to the nature of the transfer proceedings, no local attorney was required in MDL-211.

13. On January 6, 1995 I submitted a motion to withdraw as the attorney of record on behalf of the Plaintiff. On January 24, 1995 the Honorable John F. Keenan signed an order granting that motion.

Dated this 17th day of October 1995 at Burlington, Vermont.

MANCHESTER LAW OFFICES, P.C.

By: [signed] Robert E. Manchester
Robert E. Manchester
One Lawson Lane
P.O. Box 1459
Burlington, Vermont 05402
(802) 658-7444

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

Sworn and subscribed to before me this 17th day of October, 1995.

[Signed] Patricia A. Rasmussin
Notary Public

My commission expires 2/10/99

P:\CLIENTS\FULFREE\REMAFFIO.16

STATE OF VERMONT
OFFICE OF SECRETARY OD STATE

CERTIFICATE OF INCORPORATION

I certify that the attached is a true copy of the Articles of Incorporation of:

MANCHESTER & O'NEILL PROFESSIONAL CORPORATION

This certificate is conclusive evidence that all conditions required to be performed by the incorporators has been complied with and the Corporation is incorporated under the Vermont Business Corporation Act (11 V.S.A. Chapter 17).

[seal stamped]

July 1, 1983

[signed] Paul S. Gillies [?]
Deputy Secretary of State

ARTICLES OF ASSOCIATION
of
MANCHESTER & O'NEILL
Professional Corporation

We, the undersigned, natural persons of the age of twenty-one (21) years or more, acting as incorporators of a corporation under Chapter 3 of Title 11 of the Vermont Statutes Annotated and under the Vermont Business Corporation Act, adopt the following Articles of Association for such corporation:

FIRST: The name of the corporation is:
MANCHESTER & O'NEILL
Professional Corporation

SECOND: The period of its duration is perpetual.

THIRD: The purposes for which the corporation is organized are to engage in, conduct and carry on the practice of law and to do all things appropriate for the rendering and providing of legal services and services ancillary thereto.

FOURTH: The aggregate number of shares which the corporation shall have the authority to issue is: one class of 5,000 shares of common stock, par value $1.00 per share.

FIFTH: Provisions granting to shareholders the preemptive right to acquire additional or treasury shares of the corporation are: none.

SIXTH: Provisions for the regulation of the internal affairs of the corporation are: none, provided, however, that all of the shareholders may enter into an agreement concerning the composition and size of the Board of Directors, the establishment of special provisions concerning the voting of shares, and/or concerning the sale, transfer, assignment, or other encumbrance or disposal of shares of the corporation. If a copy of such agreement is filed with the corporation, such agreement shall be binding upon it and upon the shareholders.

SEVENTH: The address of the initial registered office of the corporation is 191 College Street, Burlington, Vermont, and the name of its initial registered agent at such address is Jerome F. O'Neill.

EIGHTH: The number of directors constituting the initial board of directors of the corporation is two (2), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are:

| Name | Address |
|---|---|
| Robert E. Manchester | P.O. Box 1459<br>Burlington, VT 05402 |
| Jerome F. O'Neill | P.O. Box 1459<br>Burlington, VT 05402 |

NINTH :The names and addresses of the incorporators are: Robert E. Manchester, P.O. Box 1459, Burlington, Vermont 05402, and Jerome F. O'Neill, P.O. Box 1459, Burlington, VT 05402.

TENTH: The names and residence addresses of all of the original shareholders, directors and officers of the corporation are as follows:

| Name | Residence Address |
|---|---|
| Robert E. Manchester | Shelburne, VT 05482 |
| Jerome F. O'Neill | 16 Summit Ridge<br>Burlington, VT 05401 |

Dated at Burlington, County of Chittenden and State of Vermont, as of the first day of July, 1983.

[signed] Robert E. Manchester
Robert E. Manchester

[signed] Jerome F. O'Neill
Jerome F. O'Neill

[stamp-sealed certificate]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

I, JAMES M. PARKINSON, Clerk of the United States Southern District Court, do hereby certify that

ROBERT E. MANCHESTER

was duly admitted and qualified to practice as an Attorney in the District Court on the 26th day of APRIL, 1994.

In testimony whereof, Thereunto set my hand and affix the seal of said court, at my office in NEW YORK this 26th day of APRIL, 1994.

[signed] James M. Parkinson [?]
Clerk

LISMAN & LISMAN
ATTORNEYS AT LAW
121 COLLEGE STREET
BURLINGTON, VERMONT 05402
802-864-5756

June 15, 1981

Ms. Ellen Surlak
115 Bennett Avenue
Yonkers, NY 10701

Dear Ellen:

You have asked my office to initiate an investigation on your behalf and thereby seek to prove that the Dalkon Shield IUD has caused you medical injuries and complications. You have furnished my office with medical authorizations and names and addresses of health care organizations and professions whom we have contacted to obtain copies of medical records. We now have copies of those records listed on the attached page.

Based on examination of your records and the information you have furnished, my opinion is you have a proper claim to make against the A.H. Robins Company, Inc., the manufacturer of the Dalkon Shield. I believe initiation of a claim and lawsuit will result in a successful recovery for you. In my opinion, your recovery will substantially exceed any expenses which may be incurred in the preparation of your case. Based on the value of settlements and verdicts in similar claims against the A.H. Robins Company and the extent and nature of your injuries, I expect to recover adequate compensation for you and also expect that punitive damages may be available in your case.

As a result of other cases and claims I have handled against the A.H. Robins Company, I believe suit should be filed promptly in your jurisdiction so that further delay is avoided insofar as the statute of limitations is concerned. We can expect the A.H. Robins Company to raise a statute of limitations defense in your case, as it does now in practically all cases, although I believe the law of your jurisdiction will

permit you to proceed with your claim against the manufacturer.

In my earlier letter to you I described our fee schedule, but I would like to state it again for you so you may ask me any questions that you may have. I will agree to represent you on the basis of a contingent fee agreement. This means you will owe me no attorneys' fees whatsoever unless a successful recovery occurs in this matter. If settlement results before or upon the filing of the suit but before substantial trial preparation in your individual case, then the contingent fee will be one third of the gross recovery. If we are required to begin substantial trial preparation for your individual case, then the contingent fee basis will be forty percent of the gross recovery. If an appeal is required, then you and I will reserve the right to negotiate a fee for that appeal.

Expenses incurred in your individual case will be deducted from the gross settlement at the time of disbursement. I will keep you periodically informed of all such expenses but do not believe they will be large unless I am required to actually try your case. The trial in some cases has taken over three months, but we expect our current trial preparation for all clients to reduce substantially the length of trial in your case. Nevertheless, we must be prepared for a lengthy trial since Robins' tactics include attempting to tire and wear out the plaintiffs.

In addition to the individual expense, in case of settlement or verdict, we will also expect you (as we have all individual Dalkon Shield clients) to bear a portion of the group expenses. These expenses relate to the research which we have conducted at MIT, Harvard and other facilities. This amount will vary, based upon both the numerator and denominator of my individual cases at the time of settlement. At present each client's group expense has amounted to $2,000. I expect in the future this amount will not substantially increase and may well decrease.

Dalkon Shield cases like yours require careful preparation and investigation. I will retain total control of your case and will be lead counsel at time of trial. I will, however, want to obtain the assistance of a competent and qualified attorney in your state to assist with matters of a local nature. I may also have one of my co-counsel in the IUD

recall case in Boston participate. Such attorneys, to the extent they are involved in your case, will be paid by me, and you will have no further legal fees or expenses as a result. Nevertheless, in my best judgment, the assistance of such other attorneys will enhance the settlement value or jury verdict of your case.

I would like to place your case in suit in the near future in Federal Court in your state. If you have any questions or concerns with regard to this letter, I would be happy to speak with you at your convenience.

For my files, I would appreciate your signature, indicating your acceptance of this letter proposal and your request for me to commence a lawsuit as described above on your behalf. I will look forward to hearing from you and would appreciate your returning this letter to me at your earliest opportunity. A copy of the letter is enclosed for your file.

Very truly yours,

[signed] Bob Manchester
Robert E. Manchester

I accept the terms of this letter proposal and request that you commence a lawsuit on my behalf as described in this letter.

Date: June 24, 1981

[signed] Ellen P. Surlak

---

(PLACE AN x IN ONE BOX ONLY) ORIGIN
x 2 Removed from State Court

---

(PLACE AN x IN ONE BOX ONLY) BASIS OF JURISDICTION
x 4 Diversity -> IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

---

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [x] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE PTF X
CITIZEN OF ANOTHER STATE DEF X

---

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

115 Bennett Avenue
Yonkers, NY

---

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

Manchester Law Offices
One Lawson Lane
Burlington, Vermont

Robert Manchester
Five Pond Road
Shelburne, Vermont

---

Check one: THIS ACTION SHOULD BE CLASSIFIED:
x Standard

---

Check one: THIS ACTION SHOULD BE ASSIGNED TO: x FOLEY SQUARE

---

Date 6 Sept. 1995 Signature of Attorney of Record
ADMITTED TO PRACTICE IN THIS DISTRICT x YES
(DATE ADMITTED Mo. 11 Yr. 86)
Receipt # [signed] M B Adams [hand printed] Martin B. Adams - 0825
Attorney Bar Code #

---

UNITED STATES DISTRICT COURT (NEW YORK SOXXXX)
[covered]

RICHARD W. FULFREE
ATTORNEY AT LAW
TREETOPS CARRIAGE HOUSE
612 EAST GRASSY SPRAIN ROAD
YONKERS, NEW YORK 10710

September 13, 1995

Clerk
U.S. District Court for the Southern District of New York
40 Foley Square
New York, New York 10007

Re: Ellen P. Fulfree v. Robert Manchester and
Manchester Law Offices
Docket No. 95 CIV. 7723 (DC)

Dear Sir,

I am in receipt of a Notice filed with your office and received by us on September 12, 1995. The notice is one removing the above referenced case from the Supreme Court, Westchester County to the United States District Court for the Southern District of New York at Foley Square.

Pursuant to the Rule 21 of the Southern District Court of New York, I am designating on behalf of the plaintiff, the White Plains Southern District Courthouse as the forum to handle this matter.

Obviously, since the matter was transferred to this court by the defendant, the plaintiff does not have the opportunity to designate on a civil cover sheet this request for designation.

The nature of removal and affidavit attached concedes the plaintiff's residence as 115 Bennett Avenue, Yonkers, New York, and the major part of this action arose in New York State.

Please advise as to when the matter has been or will be transferred to White Plains.

I am enclosing a stamped self-addressed envelope for your reply.

Yours truly,
[signed] Richard W. Fulfree
RICHARD W. FULFREE

[stamped] RECEIVED Sep 18, 1995
KOPFF, NARDELLI & DOPF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

ELLEN P. FULFREE,

NOTICE OF FILING
NOTICE OF REMOVAL
Index No. 95-13051

Plaintiff,

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

TO: CLERK OF THE COURT:

YOU WILL PLEASE TAKE NOTICE, that defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES have filed in the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007 a Notice of Removal of this Supreme Court action to the District Court of the United States, Southern District of New York, 40 Foley Square, New York, New York 10007.

A true and correct copy of the Notice of Removal is attached to this notice. The filing of this notice and copy of Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Westchester, effects a removal to the District Court of the United States, and the Supreme Court of the State of New York, County of Westchester may proceed no further, unless this case is remanded. 28 U.S.C. 1446(d).

Dated: September 11, 1995

New York, New York

Respectfully submitted,

KOPFF, NARDELLI & DOPF

By: [initialed] Martin B. Adams
MARTIN B. ADAMS
Associated with the Firm
Attorneys for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ELLEN P. FULFREE,

AMENDED
NOTICE OF REMOVAL

Docket No. 95-13051

Plaintiff,

-against-

ROBERT MANCHESTER and MANCHESTER LAW OFFICES,

Defendants.

----------x

Defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES hereby file this Notice of Removal of the above-described action to the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007 from the Supreme Court of the State of New York, County of Westchester, where the action is now pending, as provided by Title 28, U.S.C. Chapter 89, and state:

1. This cause was commenced in the Supreme Court of the State of New York, County of Westchester by filing of a Summons and Complaint on or about August 15, 1995, and process was served upon removing defendants on August 23, 1995. A copy of plaintiff's complaint is annexed hereto as Exhibit "A".

2. The action is a civil action for compensatory damages based upon alleged lawyer malpractice.

3. The ground for removal is that diversity jurisdiction exists,

as there is complete diversity of citizenship and the amount in controversy exceeds the sum or value of $50,000.

4. Plaintiff contends this matter in dispute exceeds the sum of fifty thousand dollars ($50,000) exclusive of interest and costs.

5. At the time of commencement of this action and at the time of removal: Plaintiff was a citizen of New York and resided at 115 Bennett Avenue, Yonkers, New York. Defendant MANCHESTER LAW OFFICES was and still is a citizen of Vermont, is deemed to have a residence at One Lawson Lane, Burlington, Vermont 05401, is incorporated only in Vermont, and has a principal place of business only in Vermont at the above address. Defendant ROBERT MANCHESTER was and still is a citizen only of Vermont and resides at 5 Pond Road, Shelburne, Vermont 05482.

6. A copy of all pleadings, process, and orders served upon defendants is filed with this notice.

7. Defendants will give written notice of the filing of this notice as required by 28 U.S.C. Section 1446(d).

8. A copy of this notice will be filed with the Clerk of the Supreme Court of the State of New York, County of Westchester, as required by 28 U.S.C. Section 1446(d).

9. This notice of removal is being filed within thirty days after the receipt by defendants of a copy of the initial pleading setting forth the claim for relief upon which the action is based. 28 U.S.C. Section 1446(b).

WHEREFORE, defendants ROBERT MANCHESTER and MANCHESTER LAW OFFICES respectfully request that this action proceed in this Court as an action properly removed to it.

Dated: October 18, 1995
New York, New York

Respectfully submitted,

KOPFF, NARDELLI & DOPF

By: [signed] Martin B. Adams
MARTIN B. ADAMS - 0825
Attorney for Defendants
440 Ninth Avenue
New York, New York 10001
(212) 244-2999

TO: RICHARD W. FULFREE, ESQ.
Attorney for Plaintiff
612 East Grassy Sprain Road
Yonkers, N.Y. 10710

ALPS
ATTORNEYS LIABILITY PROTECTION SOCIETY
A MUTUAL RISK RETENTION GROUP
SUITE 109, THE FLORENCE BUILDING, P.O. BOX 9169,
MISSOULA, MT 59807-9169
(406) 728-3113, FAX: (406) 728-7416

October 16, 1995

Mr. Martin B. Adams
KOPFF, NARDELLI & DOPF
440 ninth Avenue
New York, New York 10001-1688

Re: ALPS Claim No. A95543 - Ellen P. Fulfree vs Robert E. Manchester

Dear Martin:

The only office maintained by ALPS is in the State of Montana. ALPS has no office in the State of New York nor any other state.

If I can be of further assistance, please let me know.

Sincerely,

ATTORNEYS LIABILITY PROTECTION SOCIETY

[signed] Robyn D. Jarnagin
ROBYN D. JARNAGIN
Claims Examiner
Claims Hotline: 1-800-367-4366

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[handprinted] SDNY 95-CV-7723 Judge Chin

SUMMARY ORDER

THE SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR THE PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

As a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 4th day of October one thousand nine hundred and ninety-six.

Present: HONORABLE AMALYA L. KEARSE,
HONORABLE PIERRE N. LEVAL,
HONORABLE WILLIAM A. NORRIS*,
Circuit Judges.

[stamped] United States Court of Appeals Second Circuit
Filed Oct 4, 1996
George Lange[xxx], Clerk

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ELLEN P. FULFREE

Plaintiff-Appellant
No. 96-7095

- v. -

ROBERT MANCHESTER and [illegible]HESTER LAW OFFICES,

Defendants-Appellees.

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Appearing for Appellant: Richard W. Fulfree, Yonkers, N.Y.

Appearing for Appellees: Martin B. Adams, N.Y., N.Y.

[stamped] Received Oct 31 1996

Appeal from the United States District Court for the Southern District of New York.

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* Honorable William A. Norris, of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

[labeled] ISSUED AS MANDATE. 10/29/96

28 US Code 1443

§ 1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 US Code 1332

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs, and is between-

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section

1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $50,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title-

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not a joined as a party-defendant, such insurer shall be deemed a citizen of the State in which the insurer has been incorporated and of the State where it has its principal place of business.

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 US Code 2101

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in

part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorar to review a decision of the United States Court of Military Appeals shall be as prescribed by the rules of the Supreme Court.

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not

precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c) (1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the petitioner leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include

all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States District Court in which the notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States District Court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after such filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshall shall thereupon take such defendant into his custody and deliver a copy of the writ to the clerk of such State court.

28 US Code 1447 provides as follows:

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

Fourteenth Amendment to U.S. Constitution, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws.

Fifth Amendment to U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Rule 11 of the Rules of Civil Procedure

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose

upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

28 US Code 1331

§ 1331. Federal question.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 US Code 1254

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 US Code 1738

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession

thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 US Code 1441

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters

in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.